THE IMPACT OF INTERNATIONAL LABOUR STANDARDS ON FREEDOM OF ASSOCIATION IN BANGLADESH

by

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Abstract

This thesis focuses on examination of the impact of international labour standards on freedom of association in Bangladesh. The aim is to trace the influence of the ILO Conventions on freedom of association in the development of legislation and policy on the right to freedom of association in Bangladesh and to determine the effectiveness and relevance of the ILO's effort in this context.

The present study undertakes to focus and analyse the impact from three perspectives. First, by outlining the legislative development of the right to freedom of association in Bangladesh, the thesis attempts to ascertain the impact of the ILO Conventions on freedom of association on domestic legislation and policy. Secondly, an assessment is undertaken of the extent to which the Government of Bangladesh has fulfilled its international obligations under the ILO Constitution and evaluate the role of the ILO supervisory machinery in ensuring the right to freedom of association in Bangladesh. Thirdly, an investigation is carried out on the awareness, views and attitudes of the workers, union leaders and employers on the right to freedom of association through an empirical survey carried out in Bangladesh.

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Abbreviations Used

AITUC	All India Trade Union Congress
BAKSAL	Bangladesh Krisak Sramik Awami Leage
CFA	Committee on Freedom of Association
ILC	International Labour Conference
ILO	International Labour Organisation International Labour Office
IRO	Industrial Relations Ordinance
SKOP	Sramik Karmachari Oikya Parisad
UNESCO	United Nations Educational Scientific and Cultural Organisation
UN	United Nations
WCL	World Confederation of Labour
WFTU	Word Federation of Trade Unions
WHO	World Health Organisation

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CHAPTER 1

INTRODUCTION

I

This thesis examines the impact of international labour standards on freedom of association in Bangladesh. The aim is to trace the influence of the ILO Conventions on freedom of association in the development of legislation and policy on the right to freedom of association in Bangladesh and to determine the effectiveness and relevance of the ILO's effort in this context.

In the present thesis, the expression 'freedom of association' refers to the rights of workers and employers to organise for the defence of their occupational interests as are understood by the various Conventions on freedom of association adopted by the ILO.[1] In particular, it will be used to refer to the rights and freedoms that are guaranteed by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Thus, the expression will be taken in its broad sense, which means it will not only include the right to set up associations but also a number of other rights without which the right to organise would lose much of its meaning e.g. the right of

[1] For a conceptual analysis of freedom of association, see, Von Prondzynski, F., Freedom of Association and Industrial Relations: A Comparative Study, London 1987, pp. 10-16 and 225-26.

associations to organise their administration and activities freely.[2] It is not suggested that Conventions Nos. 87 and 98 are exhaustive of the concept of freedom of association. They quite clearly are not.[3] The fact remains, however, that Conventions Nos. 87 and 98 have acquired a degree of acceptance amongst the international community,[4] rendering them uniquely authoritative in relation to freedom of association. We will therefore, consider these Conventions and the concomitant jurisprudence as the principal focus of our examination of international protection of freedom of association in the domestic arena of Bangladesh.

Association, like other concepts, is not an absolute concept. The state may have a number of valid reasons for wishing to regulate its exercise. To do so is not necessarily incompatible with the idea of freedom of association, provided the restrictions chosen leave the basic substance of the right intact. However, Governments do sometimes succumb to the temptation to confuse justification with expediency, and the substance of fundamental rights cannot always be preserved by relying on the benevolence of state administrations. It is important therefore to inquire into the limits imposed by the ILO upon the

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[2] For the provisions of the right to freedom of association as laid down in various Conventions adopted by the ILO, see below, chapter 2, pp. 39-59.

[3] They do not, for example, make any express reference to the right to strike. They are entirely silent on issues such as right not to associate, protection of trade union funds, inviolability of trade union premises.

[4] As at December 1994 Conventions Nos. 87 and 98 have been ratified by 112 and 124 states respectively. For the lists of states that have ratified the Conventions, see, ILO, Lists of Ratifications by Convention and By Country, Report III (Part 5), Geneva 1995, pp. 110-11 and 127-28.

discretion of a Government to restrict the exercise of freedom of association.

The adoption of international labour standards is not an academic exercise. Its object is to bring about effective and harmonised progress in the national law and practice.[5] One of the factors influencing the effectiveness of standards is the degree to which they are formally accepted by member states.

Whatever effect the unratified Conventions can have in the absence of binding obligations,[6] it is in connection with the formal act of ratification that their impact is likely to be tangible and lasting. This is due to the fact that ratification involves the formal commitment of states to give effect to the Conventions within their territory and it sets in motion the regular supervisory machinery of the ILO.[7]

A state which ratifies a Convention gives an undertaking that it will make its provisions effective as from the date of its entry into force for the country concerned, which is twelve months after the registration of its formal

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[5] Valticos, N., "The Future Prospects for International Labour Standards" in International Labour Review, Vol. 118, 1979, p. 690.

[6] On the influence of unratified Conventions, see, Landy, E. A., "The Influence of International Labour Standards: Possibilities and Performance", in International Labour Review, 1970. Vol. 101, pp. 561-570; ILO, The Impact of International Labour Conventions and Recommendations, Geneva 1976, pp. 11-26.

[7] For a detailed account of the supervisory machinery of the ILO, see, Valticos, N., International Labour Law, Deventer 1979, pp. 225-261; Tikriti, A., Tripartism and the International Labour Organisation, Stockholm 1982, pp. 274-333; Samson, K.T., "The Changing Pattern of ILO Supervision", in International Labour Review, Vol. 118, 1979, pp. 569-587.

ratification with the Director-General of the International Labour Office.[8] The assumption of obligations under a Convention will have noticeable repercussions at the national level whenever the law or practice of the country needs to be modified in order to ensure compliance with the terms of the instrument. Such modifications may occur in four circumstances: they may precede the decision to ratify; they may be concurrent with it; they may occur during the period between ratification and entry into force; or they may take place when the Convention is already binding. The last mentioned alternative, although unsatisfactory from a legal point of view, none the less represents a case of influence, and one where the effect of ILO standards is liable to be particularly clear-cut.

The ILO Conventions were the first multilateral treaties to go beyond regulating inter-state relations.[9] They took up a more ambitious task: that of regulating state-citizen relations and also citizen-citizen relations.[10] This type of regulation raised problems of implementation which had never been faced in international law. Accordingly, the ILO invented new techniques of supervision

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[8] International Labour Office is the permanent secretariat of the ILO, and is expressly provided for in the Constitution of the ILO which in Article 2 stipulates: "the permanent organisation shall consist of ... an International Labour Office ...". For a detailed study on the structure of the ILO, see, Osieke, E., Constitutional Law and Practice in the International Labour Organisation, Dordercht 1985, pp. 79-141.

[9] See, Leary, V. A., International Labour Conventions and National Law: The Effectiveness of the Automatic Incorporation of Treaties in National Legal Systems, The Hague 1982, pp. 6-7.

[10] Id.

which was new in international law.[11] Now a fundamental question may be posed as to the effectiveness of these modes of implementation i.e., are they adequate to the task? Second, there are questions about international standards in a socially diverse world. Sometimes there may be a tendency to voice doubts as to the possibility of having universal standards in view of the diversity which exists between countries in the economic, social and political fields. Perhaps, nothing could be more dangerous than this sceptical relativism and it is not suggested that there should be "sub-standards for sub-humans".[12] But yet can the Conventions on freedom of association be applied universally as the ILO advocates? Might there be an argument that some aspects of the right of association as specified in the Conventions and upheld by the supervisory bodies are not the actual concern of the workers of Bangladesh in their exercise of right of association and as such have little relevance in the context of Bangladesh? Third, there are questions concerning the impact of ILO standards on the life chances of the people in Bangladesh. Does it really matter to the workers and employers that the ILO standards on freedom of association exists?

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[11] States are of course expected to carry out their obligations in good faith and the principle *pacta sunt servanda* has long been considered as a fundamental rule of international Law. But mere reliance on this rule, however generally it may be accepted, still represents a frail basis on which is to be found a durable system of global rights and duties. As the system has grown in complexity, therefore, procedures have had to be developed in order to verify governmental compliance with ratified treaties.

[12] An expression used at the Third Session of the African Advisory Committee, Dakar, October, 1967, see, Minutes of the 170th session of the Governing Body of the ILO, 1967, p. 85.

It might be easy to underestimate the impact of such standards: what would be different in Bangladesh today if the ILO and its Conventions on freedom of association did not exist?

The decision to undertake study on Bangladesh is based on the fact that the territory now comprising Bangladesh is one of the states which has been linked with the ILO since the inception of the organisation in 1919, first as part of British India, then as part of Pakistan and finally as an independent state. Moreover, it is one of the third world countries which has ratified the basic Conventions on freedom of association[13] and the Conventions have been in operation for several decades in its territory.[14] Further, a systematic investigation of the right to freedom of association as is existing in Bangladesh, the ILO standards in this regard and the ILO's effort in ensuring the right to freedom of association would not only be helpful in creating awareness amongst the workers and union leaders but also contribute to the advancement of their exercise of right of association. Moreover, as it appears to be the case that no research has been undertaken in this area to this date, so the present study hopes

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[13] Of the eight Conventions so far adopted by the ILO on freedom of association, Bangladesh has ratified three. These are: Right of Association (Agriculture) Convention, 1921, (No. 11); Freedom of Association and Protection of the Right to Organise Convention, 1948, (No. 87) and Right to Organise and Collective Bargaining Convention, 1949, (No. 98).

[14] Bangladesh has ratified Convention No. 11 on 22.6.1972 when it became a member of the ILO, but this Convention has been in force in its territory since 11.5.1923, when India and subsequently Pakistan ratified it. Similarly, Conventions Nos. 87 and 98 have been ratified by Bangladesh on 22.6.1972 but these have been in force in its territory since 14.2.1951 and 26.5.1952 respectively, as being ratified by Pakistan. For the issue of succession to the ILO Conventions, see below, chapter 2, pp. 36-38.

to offer some research literature to fill this gap.

II

The present study plans to focus and analyse the impact of international labour standards on freedom of association in Bangladesh from three perspectives. First, by outlining the legislative development of the right to freedom of association in Bangladesh, the thesis attempts to ascertain the impact of the ILO Conventions on freedom of association on domestic legislation and policy. Secondly, an assessment is undertaken of the extent to which the Government of Bangladesh has fulfilled its international obligations under the ILO Constitution and evaluate the role of the ILO supervisory machinery in ensuring the right to freedom of association in Bangladesh. Thirdly, an investigation is carried out of the awareness, views and attitudes of the workers, union leaders and employers on the right to freedom of association through an empirical survey. The following paragraphs elaborate the research design and outlines the organisation of the thesis.

Chapter 2, entitled "International Labour Standards on Freedom of Association and the International Obligations of Bangladesh" outlines the relationship of Bangladesh with the ILO by elaborating its membership history. Then it goes on to present an overview of the ILO Conventions on freedom of association adopted by the ILO and the international obligations of Bangladesh with regard to these standards.

Chapter 3 documents the development of legislation and policy on the

right to freedom of association in pre-independence Bangladesh, while chapter 4 traces the development in independent Bangladesh. In these two chapters while outlining the development of legislation and policy on the right of association attempts will be made *inter alia*: (a) to trace briefly the legislative history of the Trade Union Act, 1926 dealing with the right of association, (b) to ascertain whether the establishment of the ILO had any bearing on the legislative recognition of the right of association, (c) to focus on what was the status of the right of association immediately after achieving independence in 1947, (d) to depict the promise and performance of various successive constitutional Governments and Martial Law regimes in incorporating the provisions of the ILO Conventions in domestic law in order to fulfil the international obligations arising out of ratification of Convention on Freedom of Association, (e) to consider whether the political independence of Bangladesh in 1971 resulted in elevating the workers' right to freedom of association in conformity with the ILO Conventions in comparison to what was prevalent during Pakistani rule, and (f) to ascertain the conformity and compatibility of the legislation and policy in Bangladesh today with that of the ILO standards on freedom of association.

Chapter 5 seeks to determine to what extent the ILO supervisory mechanism has been able to procure compliance with the international labour standards on freedom of association. This will demonstrate the impact of the ILO supervision on the legislative actions of the Government of Bangladesh.

For this purpose attempts will be made: (a) to indicate to what extent the Government of Bangladesh has fulfilled its obligation to supply reports to the ILO under article 22 of the Constitution; (b) to ascertain the extent to which the Committee of Experts of the ILO addressed critical comments to the Government for enacting laws which were/are not in conformity with the Conventions on freedom of association which it has ratified; (c) to reveal whether such comments eventually led to compliance or not and (d) to examine the cases against the Government of Bangladesh filed before the Committee on Freedom of Association, highlighting the nature of the complaints and the outcome of the procedure.

By tracing and analysing the comments of the supervisory Committees from year to year, it will be shown to what extent the ILO supervision has failed or succeeded in its task. If the concept of impact is defined in such specific terms it would be easier to identify a causal relationship between international advice and national action.[15] This is so because it is not easy to measure the influence of an international organisation on events in an individual country, because the connection between the two cannot always be clearly seen.[16]

Pure academic analysis of the development of the legislation and policy on freedom of association and evaluating the supervisory role of the ILO in

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[15] See, Landy, E. A., The Effectiveness of International Supervision: Thirty Years of ILO Experience, London 1969, pp. 5-6.

[16] Price, J., ILO: 50 Years On, London 1969, p. 4.

ensuring its protection on the basis of secondary data cannot by itself be sufficient to show the whole picture of the impact of international labour standards on freedom of association in Bangladesh. So it was considered essential to reveal the actual perspectives of the beneficiaries of the right by undertaking field research in Bangladesh. Chapter 6 presents the findings of the field research. The primary purpose of the field investigation was to enquire into: (a) the awareness, opinion and attitude of the workers, union leaders and employers on the ILO, the ILO Conventions on the right to freedom of association; (b) their opinions on the extent of the right to establish trade unions; (c) their awareness and satisfaction about the provisions of the Industrial Relations Ordinance, 1969, dealing with the right to freedom of association.

The above objectives were achieved following the questionnaire survey method.[17] Of the two basic methods of obtaining primary data, namely, a) questioning and b) observation, the first was followed as it was considered to be more appropriate in terms of the objectives of the study as it would lead to tables of quantified direct responses. Structured questionnaires were used in order to yield the data for the study[18] and the respondents were chosen on the basis of simple and stratified method of sampling.[19] The conclusions of the thesis are presented in chapter 7.

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[17] For a detailed account of survey methods, see below, chapter 6, pp. 240-248.

[18] For questionnaires, see, Appendix I, II and III.

[19] For sample size and sampling frame of the study, see below, chapter 6, pp. 242-246.

III

It is apparent from the discussion of the preceding sections that the present study does not deal with the general influence of the ILO standards on the labour law and practice of Bangladesh, nor does it concern itself with the role of these standards, or of the ILO as a whole. Thus, instead of attempting to assess the general impact of the ILO and its standards from a broader perspective, this thesis confines itself only to the study of the impact of international labour standards on freedom of association in Bangladesh.

Freedom of association is the basic feature of any pluralist society. If it is accepted that decisions on economic and labour issues should not be monopolised by the state but that workers and employers should also play an important role in this respect, it is self-evident that the latter must be given the right to set up organisations for the defence of their occupational interests and that these organisations must be granted the rights which are necessary for them to act effectively. Although the basic principles of freedom of association apply to workers and employers alike, in practice usually problems arise in connection with labour unions rather than with employers' organisations. The main reason for this is probably that many Governments are more concerned about the potential influence of trade unions on national life and have therefore attempted to control them more closely. Bangladesh is not an exception to this pattern and the present thesis therefore limits itself only to the study of the workers' right of association.

The thesis further limits itself basically to the study of industrial workers right of association as trade unionism in Bangladesh is essentially an urban and industrial movement and has not yet spread to the agricultural sector. As in most countries, agricultural workers cannot be easily organised into trade unions since they usually work on semi-isolated farms scattered throughout the country. In Bangladesh the task has rendered particularly difficult because of the inadequate means of communication and the seasonal character of agricultural employment. A large number of agricultural workers are tenant-farmers and consider their social position higher than that of the landless agricultural labourers which is an impediment to unity and solidarity among them. Further the migratory character of the latter and the unstableness of employment makes organisation among them impossible.[20] The problems and issues arising out of agricultural workers' right of association and the devices and strategies to organise them is in itself a vast subject-matter of study and does not fall within the aims and objectives of the thesis as described above.[21] Thus, any detailed study of the agricultural workers right of association in Bangladesh is beyond the scope of the thesis.

The subject-matter of the present study makes it unnecessary to discuss

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[20] See, D'Costa, R., The Role of Trade Union in Developing Countries, Louvain 1963, p. 92.

[21] For the problems of agricultural labourers and the strategies to organise them, see, Aziz, A., Organising Agricultural Labourers in India: A Proposal, Calcutta 1980.

the origins and history of the ILO[22] or to review its efforts over several decades to formulate standards of labour.[23] Further, a study of history of trade union movement in Banghladesh is beyond the scope of this thesis.[24]

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[22] For the history of the establishment of the ILO and its functioning, see, Shotwell, J. T., (ed.), The Origins of the International Labour Organisation, (2 Vols.), New York 1934; Wilson, F. G., Labour in the League System, California 1934; ILO, The International Labour Organisation: The First Decade, London 1931; Alcock, A., History of the International Labour Organisation, London 1971.

[23] For a comprehensive description and analysis of the various aspects of standard-setting activities, see, Valticos, N., "Fifty Years of Standard Setting Activities by the International Labour Organisation", in International Labour Review, Vol. 100, Geneva 1969, pp. 201-237.

[24] For studies on the history of the trade union movement, see, Mathur, A. S., Trade Union Movement in India, Allahabad 1957; D'Costa, R., The Role of Trade Unions in Developing Countries: A Study of India, Pakistan and Ceylon, Louvain 1963; Khalid, M., Trade Unionism in Pakistan, Lahore 1958; Ahmed, K., Labour Movement in Bangladesh, Dhaka 1978.

CHAPTER 2

INTERNATIONAL LABOUR STANDARDS ON FREEDOM OF ASSOCIATION AND THE INTERNATIONAL OBLIGATIONS OF BANGLADESH

2.1 MEMBERSHIP OF BANGLADESH IN THE ILO AND SUCCESSION TO CONVENTIONS

The emergence of Bangladesh as an independent state was one of the most important events in the history of South Asia since the withdrawal of British rule from this region. Before its inception as a sovereign independent state, Bangladesh was first part of British India and then part of Pakistan known as East Pakistan. Hence, in order to discuss the membership of Bangladesh, we must first go back to India's membership in the ILO in 1919, followed by Pakistan's membership in 1947.

The International Labour Organisation was established by virtue of part XIII of the Treaty of Versailles.[1] At the first plenary session of the Paris Peace Conference a Commission on Labour was set up to inquire into the conditions of employment from the international aspect, to consider the international means necessary to secure common action on matters affecting conditions of employment and to recommend the form of a permanent agency to continue such inquiry in co-operation with and under the direction of the League of

[1] For text of the Treaty, see, ILO, Official Bulletin, Geneva 1919, Vol. 1, p. 332.

Nations.[2] The Commission's report was discussed in some detail in the British Empire Delegation and it was agreed that the model of the Covenant of the League of Nations should be followed for the membership of the Labour Organisation. A plenary session of the Conference accepted this view and authorised its Drafting Committee "to make such amendments as may be necessary to have the Convention conform to the Covenant of the League of Nations in the character of its membership and in the method of adherence".[3] Accordingly Article 387 of the Treaty of Versailles provided:

> The original members of the League of Nations shall be the original members of this organisation, and thereafter membership of the League of Nations shall carry with it membership of the said organisation.[4]

Hence in order to explain India's membership in the ILO we have to discuss India's membership in the League of Nations. India's membership in these organisations is of special interest since it was at that time not a sovereign state nor a self-governing territory, but a part of British empire.

The World War I had a profound effect on the attitude of His Majesty's Government towards India. Before 1917 the composition of the Imperial Conference was confined to the members of His Majesty's Government and the Governments of the Dominions. But in view of her war effort, India was represented at the special war Conferences of 1917 and 1918 and in the Imperial

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[2] Wheare, K. C.,"The Empire and the Peace Treaties 1918-21", in The Cambridge History of British Empire", Cambridge 1959, Vol. III, p. 660.

[3] Ibid, p. 661.

[4] See above, note 1, at p. 332.

War Cabinet. The Conference of 1917 expressed the view that India should be represented at all future conferences. A resolution of the Imperial War Conference, 1917, referred to the Dominions as "autonomous nations of an Imperial Commonwealth" and to India as "an important portion of the same".[5] The decision that India should be represented at all future Imperial Conferences, the great assistance rendered by her during the war, the resolution just quoted above, all had influence on the next step in the evaluation of her international status. Thus, when at the Paris Peace Conference special representation was given to the four chief Dominions[6] in the British Empire delegation, the same treatment was accorded to India.[7]

In the very first meeting of the League of Nations Commission of the Peace Conference, President Wilson proposed amendment to Article VI of the Hurst-Miller Draft regarding membership of the proposed world organisation and suggested that the Covenant should contain the following: "only self-governing states shall be admitted to the membership in the League; Colonies enjoying full powers of self-Government may be admitted.[8]

The debate on Wilson's proposal took a very wide range. His amendment had admitted the self-governing colonies but India had been left out. Lord

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[5] Report of the Indian Statutory Commission, Vol. V, London 1930, p. 1634.

[6] Australia, Canada, New Zealand and South Africa.

[7] See above, note 5, at p. 1634.

[8] Miller, D. H., The Drafting of the Covenant, New York 1928, p. 157.

Robert Cecil emphasised the special position of India and asked that India's claim for membership should be recognised. He argued:

> The President's (Wilson) amendment admits self-governing colonies; but what about the Indian Empire? She mobilized a million men and made a valuable contribution to the Allied armies... . If the League of Nations were to employ words which would arbitrarily exclude India, it would be taken by those people as bitter insult. I am free to tell you that there is a spirit of unrest abroad in India of a serious character. The British Government is trying just as rapidly as possible to advance India into a self-governing colony; and for any thing to happen which would exclude India would be unfortunate indeed.[9]

President Wilson admitted that it was indeed hard to define self-Government and stated:

> For myself I have great admiration for India's performance. The sprit she has shown is fine. Nevertheless, the impression of the whole world is that she is not self-governed.[10]

The difficulty in admitting India, President Wilson pointed out, was that if India was admitted on any principle, that principle would have to be extended to other dependent territories, such as Philippines. At the same time he argued that it would be unwise to admit territories like Philippines to the League.[11]

At this stage General Smuts, Prime Minister of South Africa, intervened in the discussion and pointed out that it was unnecessary to discuss India's case in such detail for "the Covenant itself takes care of India".[12] He cogently argued that India could become a member of the League by virtue of her being a

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[9] Ibid, p. 164.

[10] Ibid, p. 165.

[11] Ibid, p. 166.

[12] Id.

signatory to the Peace Treaty (which also included the Covenant of the League of Nations) independent of any condition which might be laid down concerning subsequent members and it would not affect her.[13]

While President Wilson hesitated as to the membership of India, he did not finally object, as Miller observes "no one else seemed to care".[14] In this manner, in a fit of virtual absent-mindedness, India became a member of the League of Nations and an anomaly in international law was created.[15]

It must always be remembered that India was an original member and not an admitted member of the League. This is not just a distinction without a difference; it was of practical importance in the case of India. Original members acquired membership in the League under Article I, paragraph 1 of the Covenant. This paragraph did not prescribe any specific qualification for membership. It merely admitted that "the original members of the League shall be those of signatories which are named in the Annex to the Covenant". India was so named and therefore was an original member of the League. Mr. David Hunter Miller summed up India's membership in the League of Nations as "an anomaly among anomalies".[16] And it was indeed so. It was a striking paradox without parallel that India enjoyed in theory at least and as a matter of course,

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[13] Id.

[14] Ibid, p. 165.

[15] Sethi, L. R., "India in the Community of Nations", in Canadian Bar Review, Vol. 14, 1936, p. 40.

[16] See, Miller, D. H., above note 8, at p. 493.

the sovereign rights of the Dominions, notwithstanding the fact that it had not reached a condition of complete autonomy even in its internal affairs.

Thus, being a member of the League of Nations India became a member of the International Labour Organisation under Article 387 of the Treaty of Versailles in 1919. In spite of being a political dependency of Britain, India's membership of the League and the ILO was indeed the first step towards elevating its international status in the assemblies of the world.[17] It can be argued that India's admission to the League and to the ILO was in a nature of a reward for the help it gave in the First World War to the Allies.[18] It also has been said that British Government was motivated by selfish interest, when she struggled for India's membership in the ILO, for this would secure the collateral support of India for Britain in her struggle for leadership at Geneva.[19]

Until 1947, India continued to be a member of the ILO under British colonial rule. But the Indian Independence Act, 1947 passed by the British Parliament on 12 July, 1947 which provided that from the fifteenth day of August, 1947 two independent Dominions were to be set up in India to be known respectively as India and Pakistan.[20] The Indian Independence Act raised

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[17] See, Dhyani, S. N., International Labour Organisation and India, New Delhi 1977, p. 121.

[18] See, Puri, M. M., India in the International Labour Organisation, The Hague 1958, p. 29.

[19] See, Dhyani, S. N., above note 17, at p. 122.

[20] For the Indian Independence Act, 1947, see, The Public General Acts and the Church Assembly Measures of 1947, Vo. 1, Chapter 30, London 1947, pp. 236-255.

questions of far-reaching implication from the view point of international law. The Act had brought about the division of British India into two Dominions, India and Pakistan. In the case of the division of India, there was no act of international law to which India was a party in her international capacity. Nor was there anything in the Act, even remotely suggesting that the Dominion of India was a continuation, pure and simple of India's juristic personality. On the contrary, it is manifest from the provisions of the Act that the territory of British India in its entirety had been partitioned between two Dominions. There was no express or implied reservation in the Act that the juristic personality of India would continue. Hence it could reasonably be argued that India had ceased to exist in international law and its place had been taken by the Dominions of India and Pakistan.

However, before the date set for this change (15 August, 1947), the Secretariat of the United Nations was obliged to consider the legal consequences with regard to membership and representation in the United Nations. In substance the following questions were presented: a) Did the division of India result in the extinction of the member state? Was it, in legal effect, a 'dismemberment' or merely a succession or breaking away of a part of state? b) What consequences did the constitutional change, the transfer of sovereignty, have on the status and representation of the member state? c) What was the status of the new state of Pakistan? Did it succeed to the rights and obligation of a member under the charter? These questions were answered in a brief legal

opinion of the Assistant Secretary-General in charge of the legal department which reads as follows:

> From the view point of international law, the situation is one in which part of an existing state breaks off and becomes a new state. On this analysis, there is no change in international status of India; it continues as a state with all the treaty rights and obligations, and consequently, with all the rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new state; it will not have the treaty rights and obligations of the old state, and it will not, of course, have membership in the United Nations.
>
> In international law, the situation is analogous to the separation of the Irish Free State from Great Britain, and of Belgium from the Netherlands. In these cases, the portion which separated was considered a new state; the remaining portion continued as an existing state with all the rights and duties which it had before.[21]

The opinion did not analyse the facts in the Indian situation but merely drew attention to what it considered the analogous situation involved in the separation of the Irish Free State from Great Britain and Belgium from the Netherlands.[22] It could be argued that the analogy of the Irish Free State would be inapplicable since it came into existence as a result of a treaty concluded by Great Britain in 1921. This was an act of international law done by Great Britain in her capacity as an international person, and there was nothing in the Act to prejudice the continuance of her international personality.[23]

The position was entirely different in the case of India. The Dominion

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[21] United Nations Press Release PM/473, 12th August, 1947.

[22] Schachter, O., "The Development of International Law Through the Legal Opinions of the United Nations Secretariat", in British Year Book of International Law, Vol. 25, 1948, p. 102.

[23] Sen, S. D. K., "The Partition of India and Succession in International Law", in Indian Law Review, Vol. 1, 1947, p. 197.

of Pakistan did not set itself up as an independent state by virtue of an agreement with India. There had been no act of international law to which India had been a party and which was the source of independence of the Dominion of Pakistan. The situation would have been totally different if India had become a Dominion before the partition and had thereafter agreed to the succession of those areas which were included in the Dominion of Pakistan. Similar results would have followed, if before the passing of the Indian Independence Act, 1947 India had with the approval of the British parliament, concluded a treaty with the seceding areas for the constitution of a separate state. However, that was not the case. Two separate Dominions had been created by virtue of a Statute of the British Parliament and not by an international agreement to which India was a party.

Whatever criticism may be centred against the legal opinion of the Secretariat, nevertheless India and Pakistan had considered themselves the problem of the devolution of the international rights and obligations, and arrived at an agreement. The agreement was promulgated by the Governor-General in the Schedule to the Indian Independence (International Arrangements) Order, 1947 which provided *inter alia*:

> 2 (a) Membership of all international organisations together with the rights and obligations attaching to such membership, will devolve solely upon the Dominion of India.
> b) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organisation as it

chooses to join.[24]

Under these provisions it is significant that Pakistan did not succeed to the membership of international organisations or the rights and obligations attaching to such membership but had to apply to become a member of any organisation it chose to apply. Thus, it did not become a member of the UN or the ILO, nor did it succeed to the rights and obligations attached to India by reason of its membership in those Organisations.

However, Pakistan applied for membership in the UN immediately on 15 August, 1947 and in accordance with the provisions of the Charter was admitted to the United Nations. Similarly on 29 October, 1947, the Foreign Secretary of Pakistan applied for the membership in the ILO under paragraph 3 of Article 1 of the ILO Constitution.[25] The Foreign Secretary in his letter stated:

> Pakistan hereby formally accepts the obligations of the Constitution of the International Labour Organisation in accordance with paragraph 3 of Article 1 of the Constitution of the Organisation and solemnly undertakes fully and faithfully to perform each and every of the provisions thereof ... . I am to state that the Government of Pakistan recognises that the obligation resulting from the International Labour Conventions ratified by India prior to 15 August, 1947 continue to be binding upon Pakistan in accordance with the terms thereof.[26]

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[24] For the Text of the Agreement see, The Gazette of India Extraordinary, 1947, pp. 911-12.

[25] Article 1(3) of the ILO Constitution reads as follows: " Any original member of the United Nations and any state admitted to membership of the United Nations by a decision of the General Assembly in accordance with the provisions of the Charter may become a member of the International Labour Organisation by communicating to the Director General of the International Labour Office its formal acceptance of the obligations of the Constitution of the International Labour Organisation".

[26] ILO, Record of Proceedings, ILC, 30th session, Geneva 1947, p. 529.

Hence, in accordance with para 3 of Article 1 of the Constitution of the ILO, Pakistan became a member of the Organisation on 31 October, 1947, the date of the receipt of the above communications.[27]

In one sense, the admission of Pakistan to the ILO was not one of admission of a new member. Until 15 August, 1947 Pakistan and India continued as one entity. On 15 August they agreed to constitute themselves into two sovereign states. One chose to continue to call itself by the old name of India, which had applied to the whole of the country and the other elected to call itself by the name of Pakistan. Inasmuch as Pakistan had been a part of India, it was in effect under the latter name, a signatory to the Treaty of Versailles and an original member of the ILO. Therefore it can be argued that Pakistan was not a new member of the ILO, but a co-successor to a member state which was one of the founders of the Organisation.

In 1971, East-Pakistan[28] in the name of Bangladesh declared itself independent and after a war of liberation achieved its independence in the same year.[29] Within a short time of its independence, on 30.5.1972, Bangladesh applied to the ILO for membership under Article 1(4) of the ILO Constitution

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[27] Id.

[28] The State of Pakistan comprised two parts, i.e., East Pakistan and West Pakistan.

[29] For independence of Bangladesh see, Chowdhury, S. R., The Genesis of Bangladesh, London 1972; Chowdhury, A. K., Independence of East-Bengal, Dhaka 1984; Zaheer H., The Separation of East Pakistan: The Rise and Realization of Bengali Muslim Nationalism, Karachi 1994.

through its foreign minister Mr. Abdus Samad Azad.[30] Under Article 1, paragraph 3 and 4 of the ILO Constitution, the procedure for admission of new members differs according to whether a state is, or is not, a member of the UN. In the former case a country may become a member of the organisation merely by communicating to the Director-General its formal acceptance of the obligations of the Constitution, while in the latter a country is admitted by a two-thirds majority vote of the International Labour Conference. Since the People's Republic of Bangladesh was at that time not a member of the UN, its admission was to be governed by paragraph 4 of Article 1 of the Constitution of the Organisation.[31]

In its letter of 30 May, 1972 the Government of Bangladesh communicated to the Director General of International Labour Office the formal acceptance by that Government of the obligations of the Constitution of the ILO. In the same letter the Government of Bangladesh recognised that the People's Republic of Bangladesh would remain bound by the obligations of the international labour Conventions which were in effect for its territory at the time of its declaration of independence.[32]

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[30] See above, note 26, 57th Session, Geneva 1972, at p. 301.

[31] Article 1(4) of the ILO Constitution reads as follows: "The General Conference of the ILO may also admit members to the organisation by vote concurred in by two thirds of the delegates attending the session, including two thirds of the Government delegates present and voting. Such admission shall take effect on the communication to the Director General of the International Labour Office by the Government of the new member of its formal acceptance of the obligations of the Constitution of the organisation".

[32] See above, note 26, 57th Session, Geneva 1972, at pp. 301-302.

In accordance with prescribed procedures, the Selection Committee of the ILO appointed a sub-committee of two Government members, two employers' members and two workers' members to examine the application. After consultation with the duly accredited representative of the People's Republic of Bangladesh the sub-committee recommended to the Selection Committee that the People's Republic of Bangladesh should be admitted to membership.

Thereafter, the report of the Selection Committee concerning the application of the Government of Bangladesh for admission to membership of the ILO was presented to the Conference by its Chairman who commended the resolution for adoption. The report was then open for discussion in the Conference.[33] The discussion began with the Government delegate of Pakistan who declared that his Government has not recognised the authorities in Dhaka and his president Mr. Z. A. Bhutto was making serious and determined efforts to find solutions to the problems facing Pakistan and the other peoples of the South-East Asian continent. In these circumstances he requested the Conference to kindly appreciate that his delegation was unable to associate with the Resolution.[34] The Government delegate of the Libyan Arab Republic endorsed the statement made by the Pakistani delegate and proposed to postpone consideration of this matter until the General Assembly of the United Nations

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[33] Ibid, at pp. 421-422.

[34] Ibid, at p. 422.

had taken a decision on the Bangladesh issue.[35]

The Government delegate of Turkey made the following observation on the issue:

> I should like first of all to state that the Turkish Government has no objection to the admission of Bangladesh to the organisations belonging to the United Nations family. Nor does it question, in principle, its admission to the ILO. Nevertheless, the matter we have to settle now is essentially a political issue, and its implications, with no doubt whatsoever, go far beyond what is within the competence of the ILO.
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> My Government has always held the view that matters relating to admission into the UN system, where such admission may have political implications should be a matter to be settled by the General Assembly of the United Nations, which by its very nature is the political forum *par excellence* of this inter governmental system.
>
> Consequently the Government delegation of Turkey believes that the question of admission of Bangladesh as a member state of organizations in the United Nation system should first of all be subject to a decision by the General Assembly of the United Nations.[36]

Despite the observations made in the Conference by the Government delegates of Pakistan, the Libyan Arab Republic and Turkey; the Government delegates of Australia, Belgium, France, India, Japan, New Zealand, USSR and Yugoslavia all recommended the admission to membership of the People's Republic of Bangladesh. The Government advisers of Poland and Venezuela and the employers' delegate of India and workers' delegate of Canada also supported the admission of Bangladesh.

When the discussion was over, the president of the 57th session of the International Labour Conference, proceeded to a record vote on the adoption of the resolution submitted by the Selection Committee. The result of the vote

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[35] Ibid, at p. 424.

[36] Ibid, at pp. 423-424.

was as follows: 313 votes in favour, 0 against, with 53 abstentions. The resolution was therefore adopted on 22 June, 1972 and consequently the People's Republic of Bangladesh became a member of the ILO.

Now the question arises whether Bangladesh's immediate application for membership was motivated by a wish to respond to labour issues promptly or by a desire to confirm its standing as a sovereign nation-state? As mentioned earlier, at the time of application for membership, the Government of Bangladesh notified to the ILO that it would remain bound by the International Labour Conventions which were in effect for its territory at the time of declaration of independence.[37] From this statement can we conclude that the Government really wished to respond to labour issues promptly? Irrespective of the then Government's attitude about labour issues, at this juncture we may take the view that in applying for membership and committing itself to abide by the Conventions which were in force at the time of declaration of independence, the then Government was motivated by a desire to confirm its standing as a sovereign nation-state. The above contention concretises through the statement which the Director-General of the International Labour Office registered with the Secretariat of the UN reads as follows:

> Part of the regular procedure of admission of new states to the ILO is a declaration by them to the Director General that they recognise that they continue to be bound by the obligations arising from the provisions of the International Labour Conventions which their

[37] Ibid, at pp. 301-302.

predecessors have made applicable to their territories.[38]

In the case of International Labour Conventions, which presuppose that their contracting parties will be members of the ILO, membership has been used by the organisation as a means of bringing about succession to Labour Conventions. Beginning with Pakistan in 1947, a practice has grown up under which every newly independent state makes a declaration recognising that it continues to be bound by obligations entered into in respect of its territory by its predecessor.[39] This practice, initiated through the Secretariat of the ILO in its early stages, had few exceptions. Sri-Lanka[40], Viet-Nam[41] and Libya[42], preferred to declare that they would give early consideration to the formal ratification of the Conventions. But the practice has now become so invariable that it has been said to be almost inconceivable that a new state should ever in future become a member without recognising itself to be bound by the Labour Conventions previously applicable in respect of its territory.[43] This prompts the conclusion that the hasty application made by Bangladesh for membership in the ILO may well have been motivated by its desire to achieve international

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[38] Yearbook of International Law Commission, Vol. II, New York 1962, p. 122.

[39] Yearbook of International Law Commission, Vol. II, Part 1, New York 1974, p. 179.

[40] ILO, Official Bulletin, Vol. XXXI, No. 3, 1948, p. 223.

[41] Ibid, Vol. XXXIII, No. 5, 1950, pp. 248-51.

[42] Ibid, Vol. XXXV, No. 2 , 1952, p. 85.

[43] See, United Nations Conference on Succession of States in Respect of Treaties, United Nations 1979, Vol. III, p. 10.

recognition and acceptance rather than to respond to the labour issues promptly.

From the above discussion it is also apparent that given the nature of colonial rule and Pakistani rule, the then Government of Bangladesh had no scope to express its concern about the appropriateness of the obligations which it undertook without any reservations and further could not give any thought of renouncing any of the ILO Conventions which were in force at the time of independence as it could be detrimental to her membership and even could make it impossible.

Having discussed the membership of Bangladesh in the ILO, we will now proceed to discuss the issue of succession[44] to the ILO Conventions which were in force in the territory of Bangladesh before its independence. The treaty practice appears to confirm that, on making a notification of succession a newly independent state is to be considered as a party to the treaty from the date of independence.[45] The Secretariat (UN) memorandum on 'succession of states in relation to general multilateral treaties' of which the Secretary-General is the depository comments on this point as follows:

> In general, new states that have recognised that they continue to be bound by treaties have considered themselves bound from the time of their attainment of independence. With regard to International Labour Conventions, however, it is the custom for new states to consider themselves bound as of the date on which they are admitted to the

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[44]For state succession see, O'Connell, D. P., State Succession in Municipal Law and International Law, Vol. I & II, Cambridge 1967; United Nations, Materials on Succession of States, New York 1967, Crawford, J., The Creation of States in International Law, Oxford 1979.

[45] See above, note 39, at p. 233.

International Labour Organisation.[46]

The statement in the Secretariat memorandum quoted above regarding the Labour Conventions needs a word of explanation. Notifications of succession to Labour Conventions take the form of declaration of continuity which are made in connection with the new state's acceptance of, or admission to, the membership of the ILO and the date of their registration with the United Nations Secretariat is that of its acquisition of membership. Equally, the date of the entry into force is the date of its acquisition of its membership, since that is the date on which its declaration of continuity takes effect and establishes its consent to be bound by the Convention. However, in the practice of the ILO, a state which makes a declaration of continuity is thereafter considered as a party to the Convention concerned as from the date of its independence.[47]

It appears that the ILO, deeply committed to the promotion of social justice as embodied in the Preamble to its Constitution, recognises that an abrupt discontinuity of relevant Labour Conventions in the territory of a new state on account of its newly acquired sovereignty would indeed be detrimental to the concept of human rights.[48] Strangely enough, when the ILO Constitution was amended in 1946, no provision was made regarding the admission of new states to which International Labour Conventions had been applied, despite the

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[46] See above, note 38, at p. 126.

[47] See above, note 39, at p. 234.

[48] Udokang, O., Succession of New States to International Treaties, New York 1972, p. 244.

fact that some colonial territories were already on the verge of achieving full independence. However, in 1951 the International Labour Office emphasised:

> In a number of cases Conventions are regarded as binding on Members of the Organisation in virtue of the principle of state succession; ... In so far as they may involve any qualifications of the ordinary rules in regard to state succession they tend to suggest that there are special considerations which give international labour Conventions a more durable character than treaty engagements of a purely contractual nature.[49]

Although this statement in itself had no obligatory force, it seems to represent the growing concern of the organisation with the pressing problem of state succession as a result of the creation of a large number of new states after the Second World War.

However, in the process of membership in the ILO and acceptance of international obligations thereof, the Government of Bangladesh succeeded to all the Conventions that were in force in the territory at the time of independence. It is apparent that the newly independent Government of Bangladesh, in order to become a member of the Organisation, had to accept the obligations in respect of Conventions that existed before independence. Though the acceptance of prior obligations was in a nature of succession to Conventions but under the practice and procedure of the ILO, the obligations were undertaken by the Government by means of submitting new instrument of ratification. Thus, the Government *inter alia* ratified Conventions Nos. 11, 87

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[49] ILO, "Explanatory Note", in The International Labour Code 1951, Geneva 1952, Vol. I, p. XCVIII.

and 98 dealing with right of association which will be detailed in the discussion below.

2.2 AN OVERVIEW OF THE ILO CONVENTIONS ON FREEDOM OF ASSOCIATION

The development of a system of international labour standards was the principal purpose behind the creation of the ILO.[50] The significance of ILO standard-setting stems from the organisation's aims and purposes. The problem of freedom of association is vital to the very existence and functioning of the ILO and has been in the forefront of its activities ever since its foundation. The reasons which have caused the ILO to concern itself from the very beginning with the problem of freedom of association are fundamental to its very Constitution.[51]

The part played by associations of workers and of employers, both in the settlement of wages and conditions of labour and in the economic and social organisation of modern states, appeared so essential to the authors of Part XIII of the Versailles Peace Treaty that they based the Constitution of the ILO not only on states - in accordance with traditional diplomatic practice of treaty

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[50] ILO, Report of the Director General, ILC, 70th session, 1984, p. 3.

[51] For the history of the establishment of the ILO and its functioning, see, Shotwell, J. T., (ed.), The Origins of the International Labour Organisation, (2 Vols.), New York 1934; Wilson, F. G., Labour in the League System, California 1934; ILO, The International Labour Organisation: The First Decade, London 1931; Alcock, A., History of the International Labour Organisation, London 1971.

making - but also on the autonomous organised forces of labour and industry.[52] Moreover, they took the view that the accomplishment of the task which thus devolved on the employers' and workers' organisations, not only on the national but also on the international plane, required full and complete recognition of freedom of association.[53]

It is for these reasons that the Preamble to the Constitution of the ILO expressly declares recognition of the principle of freedom of association to be one of the means of improving the conditions of the workers and of securing peace. Article 41 paragraph 2 of the Constitution in its original form included among the principles of special and urgent importance "the right of association for all lawful purposes by the employed as well as by the employers".[54] When the aims and purposes of the ILO were restated in the Declaration of Philadelphia in 1944, the International Labour Conference reaffirmed as one of the fundamental principles on which the ILO is based that "freedom of expression and association are essential to sustained progress". Among the programmes which it is the solemn obligation of the ILO to further, the Declaration referred in Article III, paragraph (e) to "the effective recognition of

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[52] ILO, Freedom of Association and Industrial Relations, Geneva 1947, p. 13.

[53] Id.

[54] See, The Constitution and Rules of the International Labour Organisation, Montreal 1944, p. 19. The Constitution of the ILO was amended in 1946. For details, see, Jenks, C. W., "The Revision of the Constitution of the International Labour Organisation", in British Year Book of International Law, Vol. XXIII, 1946, pp. 402-428.

the right of collective bargaining". The terms of the Declaration of Philadelphia were incorporated in the Constitution of the ILO in 1946.[55]

The affirmations of principle contained in the Constitution of the ILO have since been echoed in a number of international and regional instruments relating to human rights. Provisions on freedom of association are included in several UN instruments, i.e., the Universal Declaration of Human Rights, 1948 (Article 20 and 23 paragraph 4); the International Covenant on Economic Social and Cultural Rights, 1966 (Article 8) and the International Covenant on Civil and Political Rights, 1966 (Article 22). Among the regional instruments containing provisions on freedom of association are the American Declaration of the Rights and Duties of Men, 1948, adopted at the Ninth International Conference of American states in Bogota (Article 22); the American Convention on Human Rights, 1967, (Article 16); the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (Article 11) and the European Social Charter, 1961 (Part II, Article 5 and 6), both of which were adopted within the Council of Europe. A number of instruments mentioned above refer the right to strikes (e.g. the International Covenant on Economic Social and Cultural Rights and the European Social Charter) or to other matters related to freedom of association such as collective bargaining (e.g. the European Social Charter). The most recent of regional human rights instruments i.e., the African Charter on Human and Peoples' Rights also contains provisions

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[55] See, Jenks, C. W., above note 54, at pp. 402-428.

on the right to freedom of association (Article 10).[56]

While the terms of various instruments referred to above are by no means identical, they are all expressions of the same fundamental conviction expressed with memorable simplicity in the Declaration of Philadelphia, that "freedom of expression and of association are essential to sustained progress". According to C.W. Jenks:

> The principle of freedom of association must therefore be regarded as having taken its place among "the general principles of law recognised by civilised nations" which, together with "international Conventions, whether general or particular, establishing rules expressly recognised by the consenting states" and "international custom, as evidence of a general practice accepted as law" are indicated in Article 38 of the Statute of the International Court *of Justice*[57] among the sources of law to be applied by the Court.[58]

The first formal recognition of the principle of freedom of association in an international labour Convention is the Right of Association (Agriculture) Convention, 1921 (No. 11) which we will discuss later in this chapter.

There were several attempts to adopt a more comprehensive instrument on freedom of association in the course of the 1920s, but these foundered on the rocks of disagreement between the employer and worker groups as to whether

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[56] Although the above mentioned international and regional instruments recognise the right of association, they are less detailed than that of the ILO Conventions on freedom of association. In addition, the machinery for supervising their application, if any, is less well developed than the ILO machinery. For an account of the ILO Conventions on the right to freedom of association and its supervisory machinery, see below, pp. 45-59 and pp. 182-189 respectively.

[57] Italics added.

[58] Jenks, C. W., "The International Protection of Freedom of Association for Trade Union Purposes", in Recueil Des Cours, Vol. 87, 1955, pp. 30-31.

the right to form and join a trade union should be accompanied by a correlative right not to join.[59] According to John Price,[60] "with the growth of totalitarianism it was not possible to secure a Convention applicable to all workers in general until after the second World War".[61] The aftermath of the second World War provided a rather more propitious environment for the international recognition of trade union rights.[62] Thus in 1947, the ILC adopted the Right of Association (Non-Metropolitan Territories) Convention (No. 84). This was followed in 1948 by the Freedom of Association and Protection of the Right to Organise Convention (No. 87), and in 1949 by the Right to Organise and Collective Bargaining Convention (No. 98). Of all international and regional instruments ILO Conventions Nos. 87 and 98 provide more comprehensive protection for the right to organise and to engage in collective bargaining than any other instrument. Since 1949, the International Labour Conference has adopted a number of further standards dealing with various aspects of freedom of association. These include: the Workers' Representatives Convention, 1971 (No. 135); the Rural Workers' Organisations Convention, 1975 (No. 141); the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective

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[59] Creighton, W. B.,"Principles and Procedures of the ILO Relating to Freedom of Association" in Interights Bulletin, Vol. 6, No. 1, 1991, p. 3.

[60] John Price acted as special assistant to the Director-General of the ILO between 1959-62 with special responsibility for conducting studies of the trade union situation in the member countries.

[61] Price, J., ILO: 50 Years On, London 1969, p. 7.

[62] See, Creighton, W. B., above note 59, at p. 3.

Bargaining Convention, 1981 (No. 154). In general terms these measures do not break new ground, rather they complement the standards already embodied in Conventions Nos. 87 and 98.

Guy Caire, Professor of Economics at the University of Paris, while ascertaining the role of international standards stated:

> As a legal standard, an international Convention must fulfil certain conditions if it is to ensure the promotion of a universal set of values: the right to be protected must reflect a widely shared set of expectations among significant actors, Governmental and non-Governmental, although these expectations need not be identical; it must be general in nature so as to be capable of triggering activity and demands in social and economic fields close to, but not identical with, the original area of concern; the right to be protected must nevertheless be specific to permit investigation and rational evaluation of charges of violations; it must be important enough to be valued by its constituency apart from and beyond the particular political context of the time and place; and it must be protected by international machinery. Freedom of Association fulfils all these conditions.[63]

It is a right which broadly reflects the expectations of the social actors since the two basic Conventions on the subject were adopted by very large majorities (127 votes to 0, with 11 abstentions, in the case of Convention No. 87; 115 votes to 10, with 25 abstentions, in the case of Convention No. 98) and are currently those which have been most widely ratified.[64] Thus, freedom of association has a unique place among the basic human rights and freedoms of concern to the ILO. It is an essential pre-requisite for progress towards social justice; it enables the workers to give expression to their aspirations; it

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[63] Caire, G., Freedom of Association and Economic Development, Geneva 1977, p. 135; See, also, Haas, E. B., Human Rights and International Action: The Case of Freedom of Association, California 1970, pp. 20-23.

[64] See above, chapter 1, note 14 , p. 12.

strengthens their position in collective bargaining by re-establishing a balance in the strength of the parties; it constitutes a healthy counter-weight to the power of the state by enabling labour to participate in the framing and carrying out of economic and social policies.[65]

We will now proceed to outline the basic provisions of the international labour Conventions on freedom of association.

The Right of Association (Agriculture) Convention, 1921 (No. 11)

The first international Convention specifically concerned with freedom of association was the Right of Association (Agriculture) Convention, 1921. The Convention in Article 1 provided:

> Each member of the International Labour Organisation which ratifies this Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers and to repeal any statutory provisions restricting such rights in the case of those engaged in agriculture.

While prohibiting discrimination against agricultural workers, as compared with industrial workers, it did not contain any substantive definition of the rights of association and combination of agricultural workers. The object of the Convention was obviously to remove an inequality, yet it can be said that the Convention did not by itself guarantee any basic freedom, since 'the same rights' might be no rights at all, or rights that were severely circumscribed.[66] Put

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[65] See, ILO, International Labour Standards, Geneva 1980, p. 73.

[66] ILO, International Labour Standards: A Workers Education Manual, Geneva 1990, p. 19.

simply, if municipal law denied full freedom of association to industrial workers, it would be perfectly compatible with the Convention also to deny such freedom to agricultural workers so long they were not placed in any worse position than their colleagues in industry.

However, this Convention proved in certain cases to be of considerable practical importance as it resulted in extending the workers in agriculture trade union rights which were previously recognised only to those in industry.

The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)

At its Fourth session (February-March, 1947) the Economic and Social Council of the UN was called upon to examine the question of guarantees of the exercise and development of trade union rights which had been referred to it by the World Federation of Trade Unions[67] and the American Federation of Labour.[68] The Economic and Social Council referred this question to the ILO, under the terms of the Agreement between the United Nations and the International Labour Organisation.[69] Accordingly, the question of 'freedom of association and industrial relations' was put in the agenda of the 30th session of

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[67] For the text of the Memorandum, see, Economic and Social Council: E. C. 2/21, 28th February, 1947 (original in French), p. 2.

[68] For the text of the Memorandum, see, Economic and Social Council: E.C. 2/32, 13th March, 1947 (original in English), pp. 5-8.

[69] For text of the Agreement, see, ILO, Official Bulletin, Vol. XXIX, No. 4, 15th November, 1946, p. 293.

the Conference which opened in Geneva on 19th June, 1947, ultimately leading to the adoption by the International Labour Conference of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) is the basic instrument for the international protection of the freedom of association. It deals, on the one hand, with the rights of employers and workers to establish trade organisations and, on the other, with rights and guarantees which such organisations should enjoy. The Convention in Article 2 provides that the workers and employers without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. The scope of this provision is very wide, as it refers in particular to workers 'without distinction whatsoever'. It is clear beyond any doubt that the right to organise applies to all employers and workers, public or private, and therefore to public servants and official and to workers in nationalised industries, who are all entitled to defend their right by becoming organised.[70]

The 1947 Conference Committee, during the discussion of what subsequently became in 1948 this provision of the Convention, stressed in its report that according to this provision 'freedom of association was to be guaranteed not only to employers and workers in private industry, but also to

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[70] ILO, Freedom of Association: A Workers Education Manual, Geneva 1987, p. 23.

public employers and without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion.[71] The armed forces and the police are under Article 9 the only category in respect of which the Convention leaves countries free to determine the extent to which the Convention shall apply.

By virtue of Article 2 of the Convention, workers and employers have the right to establish organisations 'without previous authorisation'. The Convention thus guarantees to the founders of a trade union the right to establish their organisations without being required by the public authorities to obtain previous authorisation. The more or less detailed formalities usually prescribed by the law for the establishment of occupational organisations have to be considered in the light of this principle.[72]

It may be recalled that Article 2 of the Convention states that employers and workers have the right "to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing". When it refers to 'organisations of their own choosing' the Convention requires that there should be freedom of choice as to the organisations which workers, in particular, may wish to establish or which they may wish to join. Any legal provision which would limit or refuse such freedom of choice at the plant or at the occupational or national level would be at variance with the basic principle

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[71] See above, note 26, at p. 570.

[72] See above, note 70, at p. 29.

of the Convention.[73]

The reference to 'organisations of their own choosing' was intended to take account of the fact that in a number of countries where there are several organisations representative of workers and employers among which those concerned are able to choose on occupational or political grounds; it was not intended to express any view on the question whether trade union unity or a plurality of unions is preferable in the interests of workers and employers.[74] Although it is not the purpose of the Convention to make trade union diversity an obligation, the Convention requires this diversity to remain possible.[75] The term 'organisation' in Article 2 is defined in Article 10 as meaning any organisation of workers and employers for furthering and defending the interests of workers and employers.

Having dealt with the rights of the workers and employers to establish organisations, the Convention defines the rights and guarantees which these organisations should enjoy and specifies in Article 3 (2) that "public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof". The Convention provides in Article 3 (1) that "workers' and employers' organisations shall have the right to draw up their Constitutions

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[73] See, Valticos, N., International Labour Law , Deventer 1979, p. 82.

[74] See, Jenks, C. W., The International Protection of Trade Union Freedom, London 1957, p. 25.

[75] See, ILO, Report of the Committee of Experts, 1973, (Vol. 4B), paras 68-78, pp. 29-33; and 1977, paras 63-64, p. 22.

and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes".

The right of organisations to function freely is stated in the Convention in very general terms; it makes no attempt to list the basic elements of such freedom in detail or to indicate the forms of interference by the public authorities which would restrict the right or impede the lawful exercise thereof. Among the questions not particularised in the Convention on which this general provision has an important bearing may be mentioned as the financial and administrative control of organisations, freedom of meeting and publication and freedom from arbitrary arrest and search.

The most difficult question to be dealt with in the Convention was that of the relationship between freedom of association and the obligation to respect the law of the land. The difficulty of the matter is apparent; on the one hand, no state could be expected to accept right of association which is not qualified by an obligation to respect the law of the land; on the other hand, there ceases to be any international obligation or guarantee of freedom of association if the extent of the right of association is determined by the national law. The difficulty was overcome by Article 8 (1) which provides that "in exercising the rights provided for in this Convention, workers and employers and their respective organisations, like other persons or organised activities, shall respect the law of the land" but at the same time Article 8 (2) lays down that "the law shall not be such as to impair, nor shall not be so applied as to impair the

guarantees provided for in this Convention".

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

In 1946, the Third Conference of the American States members of the ILO adopted a resolution in Mexico setting out the acts of discrimination by an employer that should be prohibited by national law: making the hiring of a worker subject to a particular trade union status, or exerting pressure to ensure this, and prejudicing, injuring or dismissing a worker because of his union membership or activity.[76]

These basic aspects of the right to organise were confirmed three years later at the worldwide level by the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which in Article 1 set out the essential principle in terms almost identical with those of the Mexico resolution but making a distinction between union activities outside working hours and those within

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[76] The Mexico Resolution Concerning Protection of the Right to Organise and to Bargain Collectively, 1946 reads as follows:
"In view of the fact that the individual worker's right to organise may be put in jeopardy by discriminatory measure directed against him at the time of hiring or during tenure of employment, the law should particularly prohibit on the part of the employer or his agents all acts designed to -
(a) make the hiring of the worker subject to the expressed condition that he does not join a certain trade union or withdraws from a trade union of which he is already a member;
(b) prejudice or injure in any manner whatsoever a worker on account of his being a member, agent or official of a certain trade union;
(c) dismiss a worker for the sole reason that he is a member, agent or official of a certain trade union;
(d) in general, exert any kind of pressure upon the worker with the object of compelling him to join or not to join a certain trade union".

working hours. The Convention provides that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection, as Article 1 details, is to apply more particularly in respect of acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership, or to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities out side working hours or, with the consent of the employer, within working hours. This provision aims at protecting workers and trade union leaders against victimisation by the employers both at the time of taking up employment and in the course of their employment relationship.

Another aim of the Convention is protection, primarily of trade unions, against acts of interference, although the matter is mentioned in respect of both workers' and employers' organisations. According to Article 2, "workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents as members in their establishment, functioning or administration". In particular, acts designed to promote the establishment of workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations are described as constituting such acts of interference.

To ensure respect for the above provisions, Article 3 provides that machinery appropriate to national conditions shall be established where

necessary. Moreover, in order to create conditions for successful voluntary negotiation between employers and workers, it is provided in Article 4 of the Convention, that "measures appropriate to national conditions shall be taken, when necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers and employers' organisations and workers' organisations, with a view to regulation of terms and conditions of employment by means of collective agreements".

Unlike Convention No. 87 which applies to workers in both the private and public sectors, without distinction, and also to public servants, Convention No. 98 does not deal with the position of public servants engaged in the administration of the state and specifies in Article 6 that it is not to be construed as prejudicing their rights or status in any way. At the time of adoption of Convention No. 98, it was agreed that this instrument should not be interpreted as authorising or prohibiting union security agreements, such questions being matters for regulations in accordance with national practice.[77] In consequence, the legal systems which permit the conclusion of union security clauses are not to be deemed to be contrary to the Convention no. 98 and nor are those which prohibit such practices in pursuance of the principle of freedom of non-association.[78] The Convention contains the same provisions as the 1948 Convention (No. 87), leaving it to national laws or regulations to determine the

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[77] See above, note 26, 32nd Session, Geneva 1949, p. 468.

[78] ILO, ILO Principles, Standards and Procedures Concerning Freedom of Association, Geneva 1989, p. 4.

extent to which the guarantees provided by the Convention would apply to the armed forces and the police.[79]

The Workers' Representative Convention, 1971 (No. 135)

Freedom of Association can not be fully implemented if it is not recognised at the plant level as well as the national or occupational level. This explains the adoption in 1971, of this Convention which is supplementary to the terms of the Right to Organise and Collective Bargaining Convention, 1949. The Convention in Article 1 provides that workers' representative in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with laws or collective agreements or other jointly agreed agreements.

The term workers' representatives is defined in Article 3 as meaning persons who are recognised as such under national law or practice, whether they are trade union representatives or elected representatives, and adds in Article 4 that national laws or regulations, collective agreements, arbitration awards or court decisions may determine the type and types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention.

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[79] See, Article 5 of Convention No. 98.

The Rural Workers' Organisations Convention, 1975 (No. 141)

This Convention was adopted to take account of the difficulties experienced by rural workers in exercising their trade union rights. In principle, the workers should be able to join trade unions of their own choosing, but in practice this is not always the case; more or less overt restrictions are often imposed in case of rural workers. The Convention provides that the principles of freedom of association shall be fully respected and reaffirms the main principles of Convention No. 87. It adds that it shall be an objective of national policy concerning rural development to facilitate the establishment and growth, on a voluntary basis, of strong and independent organisations of rural workers as an effective means of ensuring the participation of rural workers, without discrimination, in economic and social development and in the benefits resulting therefrom.[80] The main purpose of Convention No. 141 is to strengthen the role of rural workers' organisations in economic and social development.

The Convention further provides that in order to enable organisations of rural workers to play their role in economic and social development, each member which ratifies this Convention shall adopt and carry out a policy of active encouragement to these organisations, particularly with a view to eliminate obstacles to their establishment, their growth and the pursuit of their lawful activities, as well as such legislative and administrative discrimination

[80] See, Article 4 of Convention No. 141.

against rural workers' organisations and their members as may exist.[81]

The Labour Relations (Public Service) Convention, 1978 (No. 151)

The right of association which is embodied in Article 2 of the Convention No. 87 is seldom refused; but is often subject to restrictions, especially to the detriment of public servants. This shortcoming led to the adoption of the Convention concerning protection of the right to organise and procedures for determining conditions of employment in the public service. The Convention contains provisions on the protection of public servants against acts of anti-union discrimination in matters of employment and measures by public authorities designed to place these categories of workers under their control. It thus dealt with the problem occasioned by the exclusion from the ambit of Convention No. 98 of public servants engaged in the administration of state.

The provisions of this Convention concerning anti-union discrimination are analogous to those of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Convention in Article 4 provides in particular that such protection shall apply more particularly in respect of acts calculated to: a) make the employment of public employees subject to the condition that they shall not join or shall relinquish membership of public employees' organisation; b) cause the dismissal of or otherwise prejudice a public employee by reason of membership of a public employees' organisation or because of

[81] See, Article 5 of Convention No. 141.

participation in the normal activities of such an organisation. The Convention further provides that public employees' organisations shall enjoy complete independence from public authorities and shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.[82]

The Convention also deals with appropriate facilities which should be afforded to the representatives of recognised public employees' organisations to enable them to carry out their functions promptly and efficiently, both during and outside working hours. The granting of such facilities should not impair the efficient operation of the administration or service concerned.[83] The Convention also provides with procedures for determining terms and conditions of employment and with the settlement of disputes through negotiations between the parties, or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.[84] Finally it provides that public employees shall have, as other workers, the civil and political rights which are essential for the freedom of association, subject only to the obligations arising from their status and the nature of their functions.[85]

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[82] See, Article 5 of Convention No. 151.

[83] See, Article 6 of Convention No. 151.

[84] See, Article 8 of Convention No. 151.

[85] See, Article 9 of Convention No. 151.

The Collective Bargaining Convention, 1981 (No. 154)

The most recent instrument on the subject of collective bargaining is the Collective Bargaining Convention, 1981. The reasons for adoption of this Convention as the Preamble says is to make greater efforts to achieve the objectives of these standards and particularly the general principles set out in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949. For the purpose of this Convention the term 'collective bargaining' extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations on the other, for a) determining working conditions and terms of employment; b) regulating relations between employers and workers; c) regulating relations between employers or their organisations and the workers' organisation or workers organisations.[86]

Article 5 of the Convention specifies that measures adapted to national conditions should be taken with a view to: a) making collective bargaining possible for all employers and all groups of workers in the branches of activity covered by the Convention; b) extending collective bargaining progressively to all matters relating to working conditions, terms of employment and relations between employers and workers or their organisations; c) encouraging the establishment of rules of procedure agreed between employers and workers organisations; d) not hampering collective bargaining by the absence of the rules

[86] See, Article 2 of Convention No. 154.

governing the procedure to be used or by the inadequacy or inappropriateness of such rules; e) ensuring that bodies and procedures for the settlement of labour disputes are so conceived as to contribute to the promotion of collective bargaining.

2.3 INTERNATIONAL OBLIGATIONS OF BANGLADESH UNDER THE ILO CONSTITUTION

The Constitution of the ILO is binding on all member states including Bangladesh through creating certain obligations, irrespective of whether or not the Government has ratified a particular Convention. These are, the obligation to submit the Conventions and Recommendations before the national 'competent authority'; the obligation to submit reports on ratified Conventions and the obligation to supply reports on un-ratified Conventions and Recommendations.

Submission of Conventions and Recommendations to National Competent Authorities

When the system of international labour standards was set up in 1919, a general desire to make the ILO Conventions particularly effective and to give them a greater impact than traditional diplomatic treaties led to the introduction in the Constitution of the ILO (now Article 19, paras 5 to 7) of a rule which was new to international law. This rule represented a compromise between the position of those delegations who wanted the Conventions to have a mandatory

character as soon as they were adopted and those who argued in favour of national sovereignty and the competence of parliaments.[87] Under this rule whenever the International Labour Conference has adopted any new Convention or Recommendation, any member state must bring the Convention and Recommendation before the authority or authorities within whose competence the matter lies, within a time limit of one year or, in exceptional circumstances 18 months[88]. There is a further obligation to inform the Director General of the ILO of the measures taken to bring the Convention or Recommendation before the authority or authorities regarded as competent and of the action taken by them.[89]

The obligation of submission is, however, unequivocal and unqualified and the extent to which it is satisfactorily discharged is regularly reviewed by the International Labour Conference during its annual examinations of information concerning such submission received from Governments.[90] This provision is reinforced by the provisions of Article 30 of the ILO Constitution which authorises a member to report to the Governing Body the failure of any other member to bring a Convention or recommendation before its competent authorities.[91] It should be mentioned that Conventions and recommendations

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[87] Valticos, N., above note 73, at p. 225.

[88] See, Article 19, paras 5(b) and 6(b) of the ILO Constitution.

[89] See, Article 19, paras 5(c) and 6(c) of the ILO Constitution.

[90] See, Jenks, C. W., above note 70, at p. 144.

[91] See, Article 19(5)(c), 19(6)(c), 19(7)(b)(iii) of the ILO Constitution.

should be submitted to the competent authorities in all cases and not only when the ratification of a Convention appears possible or when it is deemed advisable to give effect to the provisions of a recommendation.

A memorandum prepared by the Governing Body of the ILO defines[92] the term 'competent authority' as meaning the authority which has legislative power in the matters dealt with by the Convention in question, and which is obviously the legislative authority, defined most often as the National Assembly in the Constitution or Fundamental Law of the country concerned. It invites member states to make known which authority is to be considered the 'competent authority' pursuant to their national legislation, and states that a clear distinction should be drawn between 'submission' and 'ratification'. The provisions in Article 19 do not oblige the Governments to ratify the Conventions. The purpose of this provision is to ensure that effect is given to the Conventions by bringing these instruments before the competent authorities and consequently also before public opinion.[93]

Further, the purpose of this rule appears to be that it would avoid the danger of Conventions and Recommendations being buried or rejected without due consideration or even being simply forgotten by Governments. It should be noted that if Conventions and Recommendations are thus put before the

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[92] See, in this connection the memorandum on 'The Nature of the Competent Authority Contemplated by Article 19 of the Constitution of the International Labour Organisation', in ILO, Official Bulletin, 1944, pp. 205-221.

[93] Bokor-Szego, H., The Role of the United Nations in International Legislation, New York 1978, p. 160.

legislative authority capable of authorising the necessary measures to give effect to them, public attention is drawn to the matter, which may in turn act as a spur to those required to take a decision.

This obligation, independent of the fact of ratification is an innovation differing from the classical rules of international law.[94] It is beyond question that this innovation has found followers. A rule corresponding in part to the one just described appears in the last sentence of Article IV, paragraph 4, of the Constitution of United Nations Educational Scientific and Cultural Organisation (UNESCO) which provides that Conventions and Recommendations adopted by the General Conference shall be submitted to the competent national authorities within one year after their adoption.[95] As to the Constitution of the World Health Organisation (WHO), the first part of Article 20 requires member states to take such measure regarding the acceptance of Convention within eighteen months after the date of their adoption.[96]

The Obligation to Supply Reports on Ratified Conventions

Since ratification is an act through which a Convention creates binding

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[94] Id.

[95] See, Constitution of the UNESCO, in International Organisation and Integration, Hague 1982, Vol. I. B., p. 1.4.a(3). The text of the passage in question reads as follows: "Each of the Member States shall submit Recommendations or Conventions to its competent authorities within a period of one year from the close of the session of the General Conference at which they were adopted".

[96] Ibid, p. 1.5.a(5). Article 20 states "Each Member undertakes that it will, within eighteen months after the adoption by the Health Assembly of a Convention or agreement, take action relative to the acceptance of such Convention or agreement".

legal obligations for member states, one of the main purposes of the system of International Labour Standards is their ultimate ratification.[97] However, it is within the discretion of the competent authority of the member states to grant or withhold its approval of any Convention. But if the consent of the 'authority' is obtained it has obligation to communicate the formal ratification of the Convention to the Director General and to take such action as may be necessary to make effective the provisions of the Convention.[98] The constitutional obligation of a country with respect to a Convention does not terminate with the ratification of the Convention and its undertaking to make the Convention effective. It is required to submit annual reports on ratified Conventions, in such form and containing such particulars as the Governing Body may request.[99]

When the ratification required to bring a Convention into force has been registered, the ILC submits to the Governing Body for its approval a draft form of annual report for the Convention. When approved by the Governing Body, this form becomes the standard form of the annual report for the Convention prescribed by the Governing Body under Article 22 of the Constitution and Bangladesh being bound by the Convention is under a legal obligation to furnish the particulars of the measures which it has taken to give effect to its obligation which are specified in the form. Each report form contains both general

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[97] Wolf., F., "Human Rights and the International Labour Organisation", in Human Rights in International Law, Meron, T., (ed.), New York 1984, pp. 277-278.

[98] See, Article 19(5)(b) of the ILO Constitution.

[99] See, Article 22 of the ILO Constitution.

questions, which it is customary to include in identical language on all forms in use at the same time, and more detailed special question relating to points arising in connection with the particular Convention concerned. The general questions ask for: a list of the laws and regulations by which effect is given to provisions of the Convention, accompanied by the text where these are not already communicated to the ILC; particulars of judicial decisions, extracts from factory inspectors reports and statistics which relate to the application of the Convention; information as to legal effect of ratification and manner in which effective compliance is secured in any case in which there would appear to be a discrepancy between national law and the requirements of the Convention; and the general appreciation of the manner in which the Convention is applied, mentioning any difficulties which have occurred in connection with its application and any observations relating to its application which have been received from employers' and workers' organisations. The special questions ask for more detailed information concerning the manner in which particular provision of the Convention are applied and frequently relate to the manner in which matters which the Convention leaves to the discretion of members are dealt with. Both general and specific questions are revised from time to time in the light of experience.[100]

In order to comply with the constitutional requirements that states report annually on the measures taken to give effect to the ratified Conventions,

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[100] See, Jenks, C. W., above note 74, at p. 145.

Governments are required to supply a general report each year on those Conventions for which detailed reports are not required that year. When a detailed report is not sent in the year for which it is due or when the report does not reply to the comments made by the supervisory bodies, a detailed report would be due the following year. In cases in which there are serious problems of application, the Committee of Experts on the Application of Conventions and Recommendation may require that a detailed report be supplied earlier than the year in which it would normally be due. When observations on the application of a ratified Convention are made by a national or international organisation of workers or employers, the Committee of Experts on the Application of Conventions and Recommendations or the Conference Committee on the Application of Conventions and Recommendations is able to request, in the light of any explanation given by the Government in reply to the observations, that a detailed report be supplied earlier than the year in which it would normally be due.

The reports received from any state in the above manner are examined with great thoroughness and these arrangements are highly effective for the purpose of ascertaining whether its laws are in compliance with its obligations under the Conventions.[101] Such reporting procedure is also found in Article 20

[101] For Government's extent of compliance with the reporting obligation, see below, chapter 5, pp. 190-193.

of WHO Constitution[102] and Article VIII of the UNESCO Constitution.[103]

The methods evolved within the United Nations itself with regard to the application of international treaties are basically different from those used by the ILO. The fact is that the UN Charter contains no provision to this effect. Therefore the legal basis for the application of treaties are furnished by the relevant provisions of the particular instruments. Some of the human rights Conventions adopted under the UN auspices have introduced a certain obligation to report with a view to securing the application of those instruments. Thus in accordance with Article 8 of the Convention on the Abolition of Slavery (1956), the contracting parties undertake to communicate to the Secretary General of the United Nations copies any laws, regulations and administrative measures enacted to put into effect to implement the provisions of the Convention.[104] A similar obligation to submit reports is laid down in Article 16 of the International Covenant on Economic, Social and Cultural Rights.[105] The Covenant on Civil and Political Rights contains more substantive provisions to

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[102] The last sentence of Article 20 reads as follows: "In case of acceptance each member agree to make an annual report to the Director General in accordance with chapter XIV." It may be mentioned that chapter XIV of the Constitution of WHO comprises Articles 61-65 and provides the reporting procedure.

[103] Article, VIII reads as follows: "Each member shall submit to the organisation at such times and in such manner as shall be determined by the General Conference, reports on the Laws, regulations and statistics relating to its educational scientific and cultural institutions and activities, ..."

[104] For the text of the Convention see, Brownlie, I., (ed.), Basic Documents on Human Rights, New York 1992, p. 58.

[105] For the text of the Convention see, Ibid, p.114.

ensure the fulfilment of obligation under the Covenant. Article 28 provides for the establishment of a human rights Committee. Pursuant to Article 40 the contracting states undertake to submit reports on the measures they have adopted to give effect to the rights recognised in the Covenant and on the progress made in the enjoyment of those rights; these reports shall also indicate the difficulties affecting the implementation of the Covenant.[106]

The Obligation to Supply Reports on Unratified Conventions and on Recommendations

Although the Government has no substantive obligation in respect of Conventions which it has not ratified, any more than in respect of recommendations which are not open for ratification, it is under an obligation to report on them according to Article 19, para 5(c) and 6(d) of the ILO constitution. This provision requires the Government to make such reports on Conventions it has not ratified and on Recommendations as may be requested by the Governing Body of the ILO. In these reports the Governments should:

a) indicate the position of its law and practice with regard to the matters dealt with in these instruments;

b) show the extent to which effect has been given as is proposed to be given to any of the provisions of the said instruments and

c) state the difficulties which prevent or delay the ratification of the

[106] For the text of the Covenant see, Ibid, p. 125.

Convention or the application of the Recommendation.

The practice in the application of these provisions is that every year the Governing Body chooses the Conventions and recommendations for which such reports are to be requested, taking into account the importance of the current interest of the instruments concerned. In doing so the Governing Body has in the past given a preponderant place to Conventions and recommendations relating to human rights.[107] Professor Roberto Ago takes the view that:

> Through this rule the Conventions gain the benefit of some measures of *de facto* implementation by states to reconsider the situation periodically; and it some times happens that, faced with the choice between submitting a report specifying in writing the causes of delaying or preventing the ratification, and initiating the ratification procedure, even belatedly, a Government will opt for the second alternative.[108]

The obligation to state in writing the reasons for non ratification is also laid down in Article 20 of the WHO Constitution.[109]

The adoption of international labour standards was the principle means of action constitutionally assigned to the ILO when it was set up in 1919. Although the activities of the ILO have undergone development,[110] the standard-

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[107] Wolf, F., "Human Rights and the International Labour Organisation", in Human Rights and International Law, Meron, T., (ed.), New York 1984, p. 279.

[108] Ago, R., "The Final Stage of Codification of International Law", in Year Book of International Law Commission, 1968, Vol. 2, pp. 173-74.

[109] Article 20, second sentence: "Each Member shall notify the Director General of the action taken and if it does not accept such Convention or agreement within the time limit, it will furnish a statement of the reasons for non-acceptance".

[110] See, ILO, The ILO Role in Technical Cooperation, Geneva 1977; Rens J., "The ILO and Technical Cooperation", in International Labour Review, Vol. LXXXIII, 1961 pp. 413-435; Dufty, N. E., "Technical Assistance and the ILO", in Journal of Industrial

setting work is still widely recognised as one of the principle concerns of the Organisation. However, it is evident from our above discussion that the adoption of standards, strictly speaking, is only a first stage in the whole legislative procedure of the ILO. The intention is that these standards should be embodied in the law of the member countries is the second stage. To quote David Morse, the Director-General of the ILO (1948-70):

> Adoption by the Conference of the Convention and Recommendation is merely the first stage in a lengthy process. The practical value of international labour standards depends on their application in the law and practice of the member countries.[111]

The development of the right to freedom of association in Bangladesh is therefore analysed in the following two chapters in order to assess the domestic application of the Conventions.

Relations (Sydney), Vol. 9, No. 3, 1967, pp. 245-257; Ghebali, V., The International Labour Organisation: A Case Study on the Evolution of U.N. Specialised Agencies, Dorderecht, 1989, pp. 242-267.

[111] Morse, D. A., The Origin and Evolution of the ILO and Its Role in the World Community, New York 1969, p. 60.

CHAPTER 3

THE DEVELOPMENT OF RIGHT TO FREEDOM OF ASSOCIATION IN PRE INDEPENDENCE BANGLADESH: AN ANALYSIS OF LEGISLATION AND POLICY

In order to explore and understand the character of right of association prevailing now in Bangladesh one should begin with highlighting the state of right of association and the Government policy and legislation on the subject from the colonial period. This chapter seeks to trace the main outlines of Government policy and legislation affecting the right of association and labour relations since 1919, including the chief points of controversy, the new departures and modifications that have marked its evolution. For the convenience of the study we propose to discuss the development in two periods i.e., the colonial period (1919-1947), and the Pakistani period (1947-1971).

3.1 THE COLONIAL PERIOD (1919-1947)

In outlining the development of right of association during the colonial period, we propose to begin our discussion by focusing on the status of right of association that was prevalent at the time of establishment of the ILO, followed by recounting the impetus of the creation of the All India Trade Union Congress and recognition of the right of association under a legislative framework.

3.1.1 CONFUSION OVER THE STATUS OF RIGHT OF ASSOCIATION

After its establishment in 1919 when the International Labour Organisation adopted its first Convention on Freedom of Association i.e., the Right of Association (Agriculture), Convention 1921 (No. 11), it presupposed the existence of such a right among the industrial workers in member states. At this juncture we shall not proceed to debate the question how far the ILO was right in such a presumption but proceed to submit that so far as India was concerned, previous to the passing of the Trade Unions Act, 1926,[1] the legal position as regards workers' right of association was uncertain. The following passage from a speech delivered in the Indian Legislative Assembly by Mr. Joshi,[2] the mover of the resolution which eventuated in the adoption of the Trade Unions Act, 1926, clearly illustrated this general uncertainty:

> What is important is that the status of the trade unionists and the trade union officials and trade union organisations must be determined and fixed in the eyes of the law. At present the position is very doubtful. In England some years back the trade union organisations were illegal. I do not know what the position in India is. I am not a lawyer; but I take it that here a trade union is a legal organisation.[3]

Mr. Joshi correctly observed that the position was doubtful but in the absence of any positive sanction behind the formation of associations it is debateable how far he was correct to assert that a "trade union is a legal organisation". There did not exist any express legal provisions on the requirements and

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[1] Act No. XVI of 1926.

[2] Member of the Legislative Assembly.

[3] The Legislative Assembly Debates, Delhi 1921, Vol. 1, Part 1, p. 487.

formalities in establishing an association but the definition of the term 'association' and 'unlawful association' were laid down in the Criminal Law Amendment Act, 1908. Section 15 of the Act provided:

> (1) 'association' means any combination or body of persons, whether the same be known by any distinctive name or not; and
> (2) 'unlawful association' means an association-
> (a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or
> (b) which has been declared to be unlawful by the State Government under the powers hereby conferred.

The term association as defined in the Act was very wide and could virtually cover any combination of even two or more persons acting in any capacity either formally or informally. Similarly, the definition of 'unlawful association' was very wide which *inter alia* meant and included any association which had been declared to be unlawful by the State Government under Section 16 of the Act. Section 16 of the Criminal Law Amendment Act, 1908 empowered the State Government to declare an association as unlawful in the following terms:

> If the State Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the State Government may, by notification in the official Gazette declare such association to be unlawful.

The above restrictive provision had four features, namely: a) it conferred arbitrary powers on the State Government to ban an association on its subjective satisfaction b) no machinery had been provided for revision or any other mode of review of action taken by the Government c) it provided no provision for hearing the association before taking the action and d) there was no fixed period for the ban, the ban being virtually absolute and permanent. An association apart

from being declared unlawful as described above could also be subject to the charge of criminal conspiracy under Section 120A and 120B of the Indian Penal Code, 1860. Section 120A defined criminal conspiracy as follows:

> When two or more persons agree to do, or cause to be done,-
> (1) an illegal act or
> (2) an act, which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

In view of the above provisions an agreement by any two members of an association to pursue other workmen to break their contract with their employer could be considered as a criminal conspiracy punishable with imprisonment under Section 120B of the Penal Code.[4]

The question of civil liability of persons engaged in associations arose in 1920 out of a labour dispute in Madras. In October 1920, Mr. B. P. Wadia, who was the President of the Madras labour union was put under injunction by the court for his inducement of some workers of the Buckingham Mills to commit a breach of their contract.[5] The dispute which will be discussed later in

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[4] Section 120B reads as follows:
Punishment for criminal conspiracy- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he abetted such offence.
(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

[5] See, Lokanathan, P. S., Industrial Welfare in India, Madras 1929, pp. 183-84; Das, R. K., History on Indian Labour Legislation, Calcutta 1941, p. 245.

this chapter[6] suggested that trade union activities were not free from civil liabilities.

From the above discussion it is apparent that at the time of the establishment of the ILO, the workers of India did not have any positive guarantee of the right of association but were subject to the restrictive provisions of criminal and civil law. Thus it can be concluded that the state did not prevent any individual from establishing and joining an association provided the association and its members conformed to the ordinary law of the country. In other words an association of persons was not illegal merely because it was an association. Apart from this, the position was not at all clearly defined. However, despite confusion and uncertainty as to legality of formation of association, the workers of India exercised their right of association as will be evident in the discussion below.

3.1.2 EXERCISING THE RIGHT: CREATION OF THE ALL INDIA TRADE UNION CONGRESS

From the Indian view point the establishment of the ILO was of special importance. Under the 1919 Treaty of Versailles (Article 389), the labour organisations in member countries were given the power to select their representatives on the ILO Conference, subject only to the confirmation of the Government of those countries. In the absence of such organisation, the Treaty

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[6] See below, pp. 77-78.

of Versailles gave Governments the power to nominate labour representatives. Since at that juncture there was no central labour organisation in India, the Government nominated representatives of labour to the first International Labour Conference without consulting the workers.[7] This was much resented by the workers as unconstitutional.[8] The Government argued that it was justified in nominating the workers' delegate without consulting any of the labour leaders, in as much as there did not exist at that time any organisation truly representative of the workers.[9]

However, the workers of India did not fail to realise the importance of the right that was bestowed upon them and the harm that would be done if they did not organise in order to exercise that right. Therefore, the immediate impetus for the formation of the All India Trade Union Congress came when the nomination of workers representatives to the ILO was disputed. Thus, it was in 1920 that India's first central organisation of labour namely, the All India Trade Union Congress (AITUC) was formed to:

> Coordinate the activities of all labour organisations in all trades and in all the provinces in India, and generally further the interests of Indian labour in matters economic, social and political.[10]

Thus, the AITUC had, no doubt, a greater aim than sending representatives to the ILO. The creation of the AITUC was a hasty step in order to secure

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[7] Giri,V. V., Labour Problems in Indian Industry, London 1959, p. 496.

[8] Id.

[9] Revri, C., The Indian Trade Union Movement, New Delhi 1972, p. 85.

[10] Report of the All India Trade Union Congress, 5th Session, 1925, p. 59.

representation of the Indian labour at the ILO Conference at Geneva.[11] There was however nothing fundamentally wrong in a central organisation being started first and in branch associations following under its inspiration. At that time, however, there were some leaders who believed that the establishment of an all-India organisation was premature and that the state of labour organisations did not warrant its creation. On this point, Mr. V.V. Giri during the course of his presidential address to the sixth session of the AITUC spoke the following words:

> Our distinguished patriot and countrymen, L. Lajpat Raj as the president of the first session of the AITUC considered, perhaps with justification then, that the time was not ripe in the year 1920 to give an All-India name to this organisation and he further opined that it would take many more years of activity before one could possibly think of having anything like a Congress which can speak with any semblance of authority on behalf of all the workers in India.[12]

Similarly, commenting on the activities of the AITUC in 1929 Lokanathan observed:

> Whatever be the justification for the early establishment of a central labour organisation in India, there is little doubt that it has revealed the defects of its quality. For the first four or five years the Trade Union Congress was a mere annual show and very few unions really cared to affiliate themselves to it. Its one purpose was to meet and recommend delegates to the International Labour Conference.[13]

Thus, the establishment of a permanent International Labour Organisation with its annual Conferences, to which delegates from all member countries are sent

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[11] Sharma, G. K., Labour Movement in India: Its Past and Present, Delhi 1963, p. 80.

[12] See above, note 10, 6th Session, 1926 at p. 8.

[13] See, Lokanathan, P. S., above note 5, at p. 168.

and at which questions affecting the life of working class come up for discussion is one reason why labour organisation like the AITUC once formed did not die.[14] The increased status which the ILO has conferred on labour could only be maintained by keeping the association alive and the need for labour to recommend delegates annually to the Conference induced labour to organise itself and speak in a representative capacity.[15]

However, it may be right to conclude that the AITUC which was established in 1920 was not as a result of a genuine demand on the part of the labour unions for a coordinated action but was prompted by the desire to recommend to the Government of India workers' delegate to the International Labour Conference.

3.1.3 THE RIGHT UNDER THE LEGISLATIVE FRAMEWORK

The need for legislation on trade unions became apparent in the aftermath of the Madras labour dispute which we have mentioned earlier.[16] The Madras case was not proceeded with because Mr. Wadia had privately settled the dispute.[17] But the interim injunction against Mr. Wadia for his trade union activities, suggested that in absence of legislation even legitimate trade union activity was attended by considerable peril. The interlocutory decision of the

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[14] Ibid, p. 162.

[15] Id.

[16] See above, pp. 73-74.

[17] See, Loknathan, P. S., above note 5 at p. 184.

case rendered the position of workers and union officials highly insecure. It was generally felt that if the legitimate functions of the trade unions were to be carried on, immunity from certain civil and criminal liabilities should be conferred on unions and their officers. Accordingly, the question of trade union legislation came up before the first session of the reformed legislature,[18] in consequence of a suit arising out of a trade dispute in Madras and prompted Mr. N. M. Joshi to move the following Resolution in the Legislative Assembly:

> This assembly recommends to the Governor-General in Council that he should take steps to introduce, at an early date, in the Indian legislature, such legislation as may be necessary for the registration of the trade unions and for the protection of trade unionists and trade union officials from civil and criminal liability for bona fide trade union activities.[19]

When discussion on the Resolution began, Sir Thomas Holland, the minister of industries, accepted that trade unions were inevitable and observed:

> Trades unions are not only inevitable but our treaty conditions with Germany and Austria demand that we shall recognise the right of association for all lawful purposes by the employed as well as by the employer. We can not go back on our obligations, obligations incurred by treaties that have been ratified on behalf of India as well as on behalf of other parts of British Empire.[20]

However, there were some who viewed the Resolution to be premature[21] and by

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[18] Since the introduction of the constitutional changes under the Montague-Chelmsford Reforms as incorporated in the Government of India (Amendment) Act, 1919, the central legislature had the power to legislate in respect of all labour subjects, while provincial legislatures had power to legislate only in respect of those labour subjects which were classified as provincial and that too only with the sanction of the Governor General.

[19] See above, note 3, at p. 486.

[20] Ibid, at p. 491.

[21] Ibid, at p. 496.

accepting such a Resolution the Government was going to take responsibility of organising strikes against capitalists.[22] Mr. J. N. Mukherjea a member of the Legislative Assembly moved an amendment to the effect that the words "from civil and criminal liability for bona fide trade union activities" be omitted.[23] Since it asked for protection of trade unionists and trade union officials from civil and criminal liabilities for bona fide trade union activities, according to him it meant the termination of all civil and criminal administration in the country.

Sir Thomas Holland went further and asserted that in the case of trade union activities, the so-called bona fide activities, was a source of very great danger. In support of his contention he gave an example which though exaggerated as he admitted, was as follows:

> A trade union official who is protected in this manner because of his bona fide activities on behalf of the union might escape being charged with the murder of his employer if the trade union official was sincerely convinced that the murder would lead to a rise in wages or say, the conclusion of strike, and that he had no malice whatsoever against the employer.[24]

Accordingly, he suggested the following Resolution which was adopted by the House:

> This Assembly recommends to the Governor General in Council that he should take steps to introduce, as soon as practicable, in the Indian Legislature, such legislation as may be necessary for the registration of

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[22] Ibid, at p. 499.

[23] Id.

[24] Ibid, at p. 505.

trade unions.[25]

Hence, the adoption of the Resolution was the first step towards recognising the right of association of Indian workers. Nevertheless, it was suggested by one of the members of the Legislative Assembly[26] that time has not arrived in India for encouraging the growth of trade unions, by means of legislation.[27]

The Resolution was adopted on March 1, but the Government of India did not publish tentative proposals for legislation until September 1921,[28] and thus provoked a large mass of opinions.[29] Discussing these later in the Legislative Assembly Sir Bhupendra Nath Mitra, who introduced a Bill to provide for the registration of trade unions and in certain respects to define the law relating to registered trade unions in British India, informed the House in the following terms:

> The opinions expressed in response to our invitation are remarkable for their diversity. There are some who considered the proposed legislation to be premature and who would prefer that we should not proceed with it at all. There are some others who, while recognising the need for the proposed legislation, apparently considered trade unions to be dangerous and pernicious growths whose activities should be controlled rigidly so that they may not eventually overwhelm the Commonwealth.[30]

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[25] Ibid, at p. 506.

[26] Mr. Khan Bahadur Chaudhuri Wajid Hussain.

[27] See above, note 3, at p. 504.

[28] ILO, Freedom of Association, Vol. 5, No. 32, Geneva 1930, p. 330.

[29] See, Report of the Indian Statutory Commission, Vol. 5, London 1930, p. 1498.

[30] The Legislative Assembly Debates, Vol 5, Part 1, Delhi 1925, p. 78.

During the course of debate, one member of the Assembly[31] recalled India's obligation under the Treaty of Versailles emphasizing the need and importance for the proposed legislation. He observed:

> My contention is that you are pledged to the principle of this legislation. Under Article 427 of the Peace Treaty every subscribing nation is pledged to the recognition of the right of association. You cannot go back on that. That right is inherent and it is because that right is inherent that we are claiming that you should introduce this legislation.[32]

The Bill, after being debated at great length in the Legislative Assembly, was passed in March 1926 as the Trade Unions Act, 1926 and came into effect from 1 June 1927. The preamble of the Act provided that it was an Act to provide for the registration of trade unions and in certain respects to define the law relating to registered trade unions. It appears that the Act presupposed the existence of such unions and intended to put them under a legal framework. Once a trade union was registered, then to define the law governing the course and conduct of the said registered union was the other object achieved by the Act. This resulted in one inevitable conclusion, that all unregistered trade unions remained unaffected by the several restrictive and beneficial provisions of the Act.

Explaining the standpoint of the Government of India, Sir Thomas Holland, made a rather bold statement during the course of debate:

> However, it is clear to the Government that registration should be

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[31] Mr. Chaman Lall.

[32] See above note 30 at p. 755.

> optional, it is equally clear to the Government that unregistered trade unions should not be allowed to participate in the protective provisions of the Bill, *for any other course would defeat the object of the Bill which is to foster the growth of trade unions on healthy lines.*[33]

This categorical statement leaves no doubt as to the uppermost concern of the Government which was to foster the development of the Indian Trade Union on 'proper lines', as understood by the Government.

The term trade union was defined in Section 2 of the Act as meaning:

> Any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers an employers, or of imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.

An analysis of the above definition shows that in order to constitute a trade union, first, there should be a combination of workmen or of employers. Secondly, the purpose and object of combination should be either to regulate relations between the parties as specified or to impose restrictive conditions on the conduct of any trade or business. Ordinarily understood, trade unions are combinations of workmen only. But the definition as provided in the Act extended such meaning to employers' association as well.

Formation of trade unions under the Act was purely permissive in nature. Any seven or more members could apply for registration of a trade union (Section 4). It did not provide for compulsory registration nor in any way declared that unregistered trade unions be illegal. One of its greatest lacuna was

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[33] Ibid, p. 473. Italics added.

that it did not provide any clause by which employers' would remain bound to recognise a union which would be registered under the Act. In a Circular Letter dated 12 September, 1921 addressed to local Governments and administration in pursuance of the resolution adopted on 1 March, 1921, the Government of India without giving any reasons expressed:

> In the opinion of the Government of India it is neither desirable nor possible to compel employers' to recognise all unions.[34]

Hence, employers could refuse recognition of a union even when registered under the Act. It is very interesting to note that during the course of debate on the Trade Union Bill, not a single member raised the question of recognition and it appears that they accepted Government's stand on the issue.

Considering the acute shortage of trade union leaders from the rank and file, the framers of the Act made a special provision enabling non-workers to take part in the organisation and management of trade unions. According to Section 22 of the Act, 50% of the total office bearers of a union could consist of persons who were not actually employees or engaged in the industry with which the union was connected. Except for this clear-cut provision, no other rigid condition was imposed on outside leaders; they could be officers on a full time or on a part time basis; with or without remuneration from the union. It was at that time a good step indeed. Because a key requirement of efficient unionism is a sufficient supply of qualified leadership and this was one in which the Indian movement was seriously deficient from the rank and file of workers

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[34]See above, note 28, at p. 330.

as many of them were illiterate and had low levels of education. Paradoxically, the qualifications needed for union leadership in India were unusually high since English was the principal language of unionism and labour relations. Labour laws, Government reports, adjudication proceeding, employer-union correspondence were overwhelmingly in English though it was not the vernacular used by the working people.

The most important immunity conferred by the Act[35] on the officers and members of a registered trade union was the immunity from punishment under Section 120-B of the Penal Code.[36] If this provision had not been incorporated in the Act there would have been no immunity for trade unionists and like others they would have been subject to the charge of criminal conspiracy punishable with six months imprisonment or with fine or with both. Section 18 provided that no suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member in respect of any act done in contemplation or furtherance of a trade dispute to which a member of a trade union was a party on the ground that such act induced some other persons to break a contract of employment. Hence it is evident that there was protection for acts done in furtherance of an industrial dispute. An important type of action which this clause prevented was a suit arising out of the persuasion of others to join in a strike amounting to a breach of contract on

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[35] Section 17 of the Trade Unions Act, 1926.

[36] For provision of Section 120-B, See above, p. 73.

the part of workmen.

The Trade Unions Act, 1926 did not contain any clause regarding or prohibiting strikes. As it made an important omission on the subject, so the position could be explained as that the workers of a registered trade union had the right to strike. Even during the discussion in the Legislative Assembly on the Resolution which led to the adoption of the Act, Sir Thomas Holland expressed:

> Workers have perfect right to strike, whether they are under Government or under private employer they have an absolute right to strike.[37]

However, in course of time the Government changed its notion and passed the Trade Disputes Act, 1929 which under Article 15(1) provided restrictions[38] for strikes in public utility services.[39] This in fact caused a serious handicap in the exercise of the right of association as 'public utility services' covered wide range of establishments. Even those leaders who were considered acceptable by the Government such as N. M. Joshi who was a member of the Royal Commission on Labour in India, characterised the Trade Disputes Act, 1929 as "reactionary

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[37] See above, note 3, at p. 493.

[38] Any person who, being employed in a public utility service, goes on strike in breach of contract without having given to his employer, within one month before so striking, not less than fourteen days previous notice in writing of his intention to go on strike before the expiry thereof, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

[39] According to Section 2(g) 'public utility service' meant: i) any railway service which the Governor-General-in-Council may by notification in Gazette of India, declare to be of a public utility service for the purpose of this Act; or ii) any postal, telegraph or telephone service; or iii) any industry, business or undertaking which supplies light or water to the public; or iv) any system of public conservancy or sanitation.

and mischievous" contending that it would "help the employers and not labourers".[40]

Immediately after the passing of the Trade Disputes Act, 1929 the Government of India on 24 May 1929 appointed a Royal Commission on Labour in India under the chairmanship of Rt. Honourable Mr. J. H. Whitley, known as Whitley Commission. The Commission submitted its report in June 1931. Some considered the report to be a Magna Carta of labour in India[41] and it formed the basis of the future labour policy of the Government in the years to come.[42]

The Commission made far reaching recommendations, any detailed analysis of which is beyond the scope of this research. However, following the publication of the Commission's report there was a spate of legislation. Out of 24 labour enactments adopted by the Central and Provincial Legislatures during years 1932 to 1937 as many as 19 were in implementation of the Commission's suggestions.[43] However, though the Commission recommended recognition of unions by employers,[44] nothing was done to implement that

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[40] Karnik, V. B. Strikes in India, Bombay 1967, p. 176.

[41] Menon, V. K. R.,"The Influence of International Labour Convention on Indian Legislation", in International Labour Review, Vol. 73, 1956, p. 556.

[42] Vidyarthi, R. D., Growth of Labour Legislation in India Since 1939 and Its Impact on Economic Development, Calcutta 1961, p. 39.

[43] See, Menon, V. K. R., above note 41, at p. 557.

[44] Report of the Royal Commission on Labour in India, London 1931, p. 326.

recommendation.[45]

On the contrary, the situation was such that at the 1933 International Labour Conference in Geneva the Indian workers' delegate asserted that there was 'unmistakeable evidence' that the authorities were willing to act in combination with employers in order to silence the workers, and deprive them of their legitimate means of protection, namely, the right of association and of strike.[46] However, at a Conference of Government representatives, employers and workers, held at New Delhi in August in 1942, it was decided to establish a permanent tripartite labour organisation in India, composed of an annual Conference and Standing Committee, on the model of ILO.[47] This decision made an important step in the evolution of the machinery of industrial relations in India. No doubt it was a development which had been facilitated to no small extent by India's association with the ILO.

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[45] However, the Trade Unions (Amendment) Act, 1947 provided recognition of unions by employers but it never came into force as it required Gazette Notification by the Government which was lacking.

[46] "When the workers of the Madras and Southern Maharatta Railway workshops went on strike sometime ago, as a protest against the overriding by the chief executive of the Railway Company the terms of an agreement he had come with the Trade Union concerned as regards reduction of staff, the Government turned down the request and supported the Railway executive in its action. In the Indian Textile Industries the employers have started a war of attrition against the workers. The mill owners are making a joint and systematic attempt to reduce wages in mills individually, and the workers affected in each mill are prevented by police action from organising demonstrations or from combining with the workers in other means in a general strike".- Extract from Proceedings of the International Labour Conference, Geneva 1933, p. 203.

[47] ILO, "The Institution of Tripartite Labour Organisation in India: The Influence of the ILO", in International Labour Review, Vol. 47, 1943, p. 1.

It was exactly the same year, under pressure of increased production for the allies' war supplies in the second World War and to ensure that relations between employers and workers did not get strained and thereby upset the machinery of production in industries engaged on war work, the Government of India in January 1942 added Rule 81-A of the Defence of India Rules empowering the Central Government to prohibit strikes or lock-outs and to refer any dispute for conciliation and adjudication. Soon the Rule was modified by an order passed under the Rule in August 1942 which provided that 14 days notice should be given to the employer within one month before striking, and when a dispute referred for conciliation and adjudication the workers would be prevented from going on strike until the expiry of two months after the conclusion of the proceeding upon such a reference.[48] Wartime experience, however, had led the Government to feel that Rule 81-A of the Defence of India Rules was extremely useful and that its incorporation in the permanent labour law of the country would do much to quell the industrial unrest which was gaining momentum owing to the stress of post-war industrial readjustments. The main provisions of the Rule in regard to the public utility services were, therefore, retained intact in the Industrial Disputes Act, 1947, which replaced the Trade Disputes Act, 1929.

The history of the development of labour legislation in India reveals that the enactment of various labour statutes was done as and when warranted by

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[48] Government of India, Labour Investigation Committee, (Main Report), New Delhi 1946, p. 68.

circumstances or under several pressures. A consistent and planned labour policy was conspicuous by its absence. Under stress of conditions created by the second World War and more particularly the need for greater production, that the Government of India realised that the problem of labour could be best tackled on the basis of a carefully drawn plan.[49] Accordingly, in 1946 the Central Ministry of Labour worked out a Five Year Programme for the amelioration of labour conditions through legislative and administrative measures.[50] This Five Year Programme can be said to have formed the basis of future labour legislation and reform. The Programme did not get enough time to be implemented since the year 1947 witnessed the split of British India. However, we will see in our discussion in the next Section whether the Programme had any influence on subsequent Pakistan Government's labour policy.

In order to determine the state of right to freedom of association in the closing years of the British rule in India the report of Labour Investigation Committee may be quoted which submitted its report in 1946 observing :

> From such evidence as we were able to obtain during the course of our enquiries, we found that, barring a few honourable exceptions such as municipal and port trust administrations and a few individual employers, freedom of association exists only in name.[51]

The Committee further emphasised:

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[49] Vaid, K. N., State and Labour In India, Bombay 1965, p. 218.

[50] Government of India, The Indian Labour Year Book, Simla 1947-48, p. 95.

[51] See above, note 48, at p. 372.

> It is not to say, however, that the workers in this country are not permitted to organize themselves into trade unions and, in point of fact, in the year 1943, there were in the country as many as 693 registered trade unions. Very few of these unions have, however, been recognised by the employers and even where they are, the relations between the two are far from cordial. Moreover, excepting a few enlightened employers, most others in the country are inclined to look upon trade unions as no better than necessary evils.[52]

From the above observations it is evident that the situation had not changed from that of 1927 when in contradiction to the Government's claim that there was full right of association enjoyed in India, the workers delegate to the International Labour Conference Mr. V. V. Giri declared:

> Speaking on the question of freedom of association, I might just mention that we have not much of it, and even organised association in India are practically suppressed and gagged when the real issues between employers and the employees arise.[53]

Hence, it will be right to comment that the stimulus given by the legislative enactments to the right to freedom association resulted, not so much from any right that it created, as from the enhanced status given by the recognition of the trade unions in the Statute Book.

3.2 THE PAKISTANI PERIOD (1947-1971)

The decade that followed immediately after the second world war saw the independence of many Asian countries from colonial rule. In 1947, the former British India was partitioned to form two sovereign states, India and Pakistan. After independence, the Government of Pakistan adopted the entire

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[52] Id.

[53] ILO, Record of Proceedings, ILC, 10th Session, Geneva 1927, p. 99.

labour legislation as it existed at the time of partition under the Pakistan (Continuation of Existing Laws) Order, 1947. From the discussion of the preceding Section it is apparent that when Pakistan became independent in 1947, it did not start with a clean state in labour matters including in respect of the right of association. We will now proceed to outline chronologically the course and character of right of association as developed during the Pakistani period.

3.2.1 THE DECADE FOLLOWING INDEPENDENCE

We have noted earlier that during the days of colonial rule there was no formal declared policy with regard to labour. The newly independent Government of Pakistan carried the colonial legacy in the following years. It was only on 15 August, 1955 that there was a formal declaration of labour policy by the Government of Pakistan. It must however be emphasised that in the intervening period the attitude of the Government was not one of non-interference in labour matters. In February 1949, the first Pakistan Labour Conference, composed of the representatives of the Government, employers and workers was convened and the Five Year Programme of work inherited from India[54] was laid before it to decide to what extent and in what direction the Programme "should be taken up in the light of the labour conditions prevailing

[54] The Programme *inter alia* contained suggestions for suitable amendment of the Trade Unions Act, 1926.

in Pakistan".[55] The Conference approved the Five Year Programme of work.[56] Thus, in the intervening period the labour policy of the Government comprised the Five Year Programme of work in the field of labour drawn up by the Indian Government before partition in October 1946. This can be said to have formed the labour policy of the Government without a formal declaration.

It appears that the first Conference took some positive decisions in the development of right of association. The Conference *inter alia* decided that the Trade Union (Amendment) Bill, 1947 which was outstanding from the Indian Legislative Assembly should be proceeded with and enacted as soon as possible,[57] taking into consideration any suggestions which workers and employers might suggest.[58] It was also decided in the Conference that the ILO Convention No. 87 which was adopted by the ILO in 1948 should be ratified by the Government of Pakistan and the proposed Convention on Right to Organise and to Bargain Collectively, should be supported by Pakistan at the next session of the Conference.[59]

Hence, it can be asserted that after independence the first Tripartite Labour Conference genuinely took a positive stance towards protection of the

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[55] Shaft, M., Eleven Years of Labour Policy, Karachi 1959, p. 1.

[56] Id.

[57] The Bill *inter alia* provided for compulsory recognition of union by the employers and the elimination of unfair labour practice on the part of the employers.

[58] Eastern Pakistan Labour Journal, Vol. II, No.1, March 1949, p. 5.

[59] Ibid, pp. 5-6.

right of association. The Government of Pakistan also acted positively as in accordance with the decision of the Conference, supported the adoption of the Right to Organise and Collective Bargaining Convention (No. 98) at the next session of the International Labour Conference and subsequently ratified Convention No. 87 on 14 February, 1951, and Convention No. 98. on 26 May, 1952.

The Government by ratifying the Conventions undertook to abide by the provisions of the Conventions. But the question arises, was the existing legislation in harmony with the Conventions? From our discussion in the previous Section, it is apparent that the Trade Unions Act, 1926 contained some provisions which could not be said to be compatible with the provisions of the Conventions. However, it was perfectly valid for the Government to take necessary steps subsequent to ratification. Thus, we need to examine the intention and action of the Government and determine whether the Government was really keen to implement the provisions of the Conventions at national level.

It was only two months after the adoption of the ILO Convention No. 87, the Cabinet Secretariat of the Government of Pakistan issued a Notification on 30 August 1948 dealing with associations of employees of the Central Government.[60] The Notification provided instructions for the recognition of association of employees of the central Government other than associations of

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[60] See, Establishment Division Notification No. 6/1/48-Ests. (S. E.) of 30 August 1948.

industrial employees. In clause 2 of the Notification it was stated that the Government would recognise association of its employees, provided that each such association consisted of a distinct "class"[61] of Government employees. As to the membership of association clause 3 of the Notification provided:

> Every Government employee of the same class actually in service shall be eligible for membership of the association representing that class and only members of that class actually in service shall be so eligible.

The Notification as described above was in clear contradiction of Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948, (No. 87) which provides right to "join organisation of their own choosing"- a right which had been curtailed by the Notification.[62] Actually, the restrictions applied only to those associations which tried to seek official recognition by the Government. Hence, the Government employees were at liberty to establish and join unrecognised organisations of their own choosing, without being compelled to belong to associations representing their category.

Soon after the ratification of Convention Nos. 87 and 98 the Government in the year 1952 promulgated the Security of Pakistan Act,[63] which provided that an organisation could be disbanded and wound up under Section 10, if it

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[61] According to clause 2 of the Notification: "class means either one of the classes into which the Government servants may be broadly classified: i.e., class I, Class II, Class III and Class IV, or any association of Government servants within one class whose special position may warrant the formation of a separate association and which the Government is prepared to recognise".

[62] For the ILO Committee of Experts opinion on the Notification, see below, chapter 5, pp. 199-202.

[63] The Gazette of Pakistan, Extraordinary, 1952, p. 553.

acted in a manner prejudicial to the defence and security of Pakistan or to the maintenance of supplies and services essential to the community or maintenance of public order. The Act did not provide any clause by which an organisation so charged could be asked to show cause against such action before disbanding nor was there any provision for appeal against such decision. Further, there was no provision in the Act for the revival of the dissolved organisation. The Government could take possession of any property or documents of the dissolved organisation. Clause (6) of Section 10 provided that contravention of any of the provisions would be punishable for a term which may extend to 3 years or with fine, or with both. This leads us to the conclusion that the immunities to trade unionists granted under the Trade Unions Act, 1926 were no more than a formality that meant little in practice. If the Government decided to arrest a trade unionist, he could be arrested and charged without difficulty under the vague terms of the Security of Pakistan Act, 1952.

The Five Year Programme adopted by the first Pakistan labour Conference in February 1949 was to be completed by February 1954. But paradoxically having done nothing in respect of the Programme, on 15 August 1955, after numerous representations and strong protests by labour including the possibility of a general strike in the whole country, the Government made a formal announcement of its first labour policy.[64] If one carefully compares this policy with the Five Year Programme of labour approved in 1949, one would

[64] See, Shafi, M., above note 55, at p. 4.

find almost no difference in fundamentals, in fact almost all the items were common though there had been some difference in the phraseology and minor detail. The main content, objectives and even legislative and administrative measures proposed to achieve were almost identical.

It can be argued that there was no compulsion on the Government to adopt the Five Year Programme in 1949. It undertook this obligation of its own decision. It could well refuse to be party to it. In the state of affairs that followed it would have been much easier if no Five Year Programme had been adopted. It would have spared the Government from criticism. But having publicly announced a programme and subsequently failing to implement it in the five year period, the Government landed itself in a position almost impossible to defend.

The new policy began with the statement:

> It is the policy of Government to encourage growth of genuine and healthy trade unions in order to promote healthy collective bargaining on the part of labour and to enable it to conduct negotiations with the appreciation of the country's economy.[65]

The policy further provided that "the system of collective bargaining should be encouraged and developed".[66] The policy seems to have suffered from a contradiction since from the Government's point of view, conciliation and arbitration provided a superior basis for industrial negotiations than free

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[65] See, Labour Policy 1955 in Shafi, M., Labour Policy of the Government of Pakistan, Karachi 1961, p. 35.

[66] Id.

collective bargaining because of the strikes and work stoppage which the latter process necessarily entails. The preamble of the policy made this quite clear:

> In this country where industrialisation is in its early stages, Government is anxious that, while labour should get its just rights, industry should not be hampered by unnecessary up-heavals and strikes. Government, therefore, believe in promoting the settlement of disputes between employees in the interest of industrial peace through constitutional means ... .[67]

Actually, the Government of Pakistan had little doubt, from the outset, concerning its priorities when presented with the choice between identifying "rapid economic development" with the interest of employers, and "social justice" identified with the interest of the workers, which was assumed to militate against rapid economic development. The subordinate role of labour in the hierarchy of interests of the Government was stated with appropriate rhetorical ambivalence by the Prime Minister in his address to the first Tripartite Labour Conference in 1949 where he said:

> We must create conditions which are favourable to labour. My Government will take all necessary steps to see that labour gets its due share in all enterprises ... . Labour must remember that the interest of Pakistan comes before the interest of any individual or class of individuals and must not do anything which in any way weakens Pakistan. If Pakistan endures and prospers the problem that Pakistan labour has can be solved.[68]

The policy provided that "provision should be made in the Trade Unions Act for determination of recognition or non-recognition of a trade union by a

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[67] Id.

[68] See above, note 58, at pp. 13-14.

judicial authority".[69] Thus, on recognition of trade unions the Policy departed from the Trade Unions (Amendment) Act, 1947 and the earlier Five Year Programme which provided for compulsory recognition of unions by the employers. It may be pointed out that the Trade Union (Amendment) Act, 1947 which was passed by the Indian Legislature[70] and subsequently discussed in various Tripartite Labour Conferences provided for recognition of unions by employers.

Although, at the time of declaring the policy the Government of Pakistan had ratified ILO Convention Nos. 87 and 98, yet it is unfortunate that the Government did not show its intention to abide by its international obligation as it was expressed in the policy that "non industrial employees of the Government may be allowed to form Service Associations and follow the instructions of the Cabinet Secretariat concerning their recognition".[71] Further, with regard to civil servants the policy stated:

> Since civil servants can form their own associations, they should not be allowed to form trade unions and since their conditions of service are different from other workers, they should not be allowed to affiliate their associations with associations of trade unions.[72]

Hence, it is apparent that ratification of those Conventions had no influence on the policy makers who, ignoring Article 2 of Convention No. 87, reaffirmed its

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[69] See above, note 65, at, p. 36.

[70] See above, note 45, p. 87.

[71] See above, note 65, at p. 37.

[72] Ibid, at p. 38.

old stand on the issue.[73]

Though achieving independence in 1947, it was not until 1956 that the Government of Pakistan adopted its first Constitution. According to the Indian Independence Act, 1947, the Government of India Act, 1935 was its interim Constitution which did not provide any Bill of Rights. The 1956 Constitution made a significant departure in this regard by providing a Bill of Rights. Article 10 provided:

> Every citizen shall have the right to form associations or unions, subject to any reasonable restriction imposed by the law in the interest of morality or public order.

The insertion of this right in the Constitution was the first constitutional recognition of the right to freedom of association in independent Pakistan.[74]

Under Article 102 of the Constitution, the provincial Governments could promulgate labour legislation. Accordingly, the Governor of East Pakistan promulgated the East Pakistan Trade Unions (Recognition) Ordinance, 1958.[75] Instead of providing for compulsory recognition of trade unions by employers, the Ordinance laid down recognition by agreement of registered unions.[76] Having failed to obtain such recognition, trade unions could apply to the Registrar. Surprisingly such recognition, be it by agreement or by order of the

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[73] See, discussion above pp. 93-94 and also the Establishment Division Notification No. 6/1/48-Ests. (S.E) of 30 August, 1948.

[74] For discussion on the constitutional perspectives of the right of association, see below, pp. 108-113 and pp. 135-141.

[75] Dhaka Gazette Extraordinary, 27 January 1958, pp. 561-565.

[76] See, Section 3 of the East Pakistan Trade Unions (Recognition) Ordinance, 1958.

Registrar, was only for a period of one year and on expiry of the period, the unions could again apply for recognition.[77] By providing for a limited period of recognition and requiring unions to apply again, the Government expressed its intent to intervene regularly and directly in industrial relations. Nevertheless, it was the first piece of legislation which provided some form of recognition of unions. Further, the Ordinance, without using the term 'collective bargaining' provided that the executive of a recognised union shall be entitled to negotiate with employers in respect of matters connected with employment or non employment or the conditions of labour of all or any of its members.[78] This provision for the first time elevated the position of workers in respect of bargaining with their employers, since workers' representatives could enter into negotiation with employers on issues as stated above. Thus it appears that after ratification of Convention No. 98, it was the first legislative step by the provincial Government to incorporate provisions on the right to bargaining. It needs to be mentioned that the legislation was supplementary to the Trade Unions Act, 1926 and did not amend any provisions of the Act. However, this was the gift of Provincial Legislature of East Pakistan and applied to East Pakistan. Now the obvious question arises what was the role of the Central Legislature?

It is apparent from our discussion that since independence, the Central

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[77] Ibid, Section 4.

[78] Ibid, Section 3.

Government failed to promulgate any positive legislation in respect of workers' right of association and the proposed amendment of the Trade Unions Act, 1926 suffered from bureaucratic statements of "under consideration" and "being revised".[79] Hence, nothing was achieved during this period. It is most surprising that the Tripartite National Labour Conference which was held every year never bothered to inquire from the Government as to what action Government took on the discussion of the previous session. This suited the employers but what about the workers? It seems that the Government was never serious about the outcome of its discussions. In fact it was not seriously interested to do anything for labour. It had implicitly decided to take no action over a period of years and the Conference was treated merely as a debating club. By ratifying Conventions Nos. 87 and 98 on 14 February 1951 and on 26 May respectively, the Government of Pakistan entered into an international commitment to implement its provisions. But since ratification, more than six years passed without any positive action from the Central Government of Pakistan to incorporate the provisions of the Conventions in domestic legislation.

3.2.2 THE FIRST MARTIAL LAW PERIOD

In 1958, against the background of nation-wide political upsurge and demands for a general election,[80] General Iskander Mirza, the President of

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[79] See, Shafi, M., above note 55, at pp. 22-24.

[80] See, Shaheed, Z. A., The Organisation and Leadership of Industrial Labour in Karachi (Pakistan), Unpublished Ph.D Thesis, 1977, University of Leeds, U.K., p. 158.

Pakistan, with the collaboration of General Ayub Khan, the commander in chief of the army, proclaimed Martial Law,[81] dismantling the paraphernalia of parliamentary Government and abrogating the Constitution of 1956. The declaration of Martial law was a serious set back in the development of the right of association since the constitutional guarantee ceased to exist.[82] The labour laws of the country remained in force after the declaration of Martial Law on 7 October, 1958.

The failure to implement the Labour Policy of 1955 led the Martial Law Government to announce its revised policy in 1959. The new policy made a significant departure from the earlier one in respect of Government's international commitment as the policy began with the statement:

> The policy of the Government of Pakistan in the field of labour shall be based on the ILO Conventions and Recommendations ratified by Pakistan.[83]

It is of interest to note that the 1955 policy did not contain any clause having reference to the ILO, though declared by a democratic Government. From the ILO point of view, in matters of collective bargaining the policy was very optimistic and encouraging as it was declared:

> The employers and workers should negotiate with each other the terms and conditions of employment and conclude collective agreements in fulfilling the commitment made by Government in ratifying the ILO Convention (No. 98) concerning Right to Organise and to Bargain

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[81] For, the Proclamation of Martial Law, see, Pakistan Legal Decision, (Central Statutes), 1958, p. 577.

[82] Article 10 of the Constitution guaranteed the right of association. See above, p. 99.

[83] See above, note 65, at p. 1.

Collectively.[84]

The above declaration was indeed a landmark in the annals of industrial relations, as it was for the first time that the Government in principle recognised the concept of collective bargaining having referred to Convention No. 98. Though the term collective bargaining had not been used but "collective agreement" as referred to above essentially indicated the essence of the meaning of collective bargaining within the meaning of Convention No. 98. Further, by declaring as above, the Government expressed its intention to abide by and fulfil its international obligations arising out of ratification.

Like the Five Year Programme and the earlier labour policy of 1955, the new policy emphasised on recognition of trade unions in the following terms:

> In order that there is compulsory recognition of trade unions by the employers, steps shall be taken immediately to set-up a machinery which can decide which union is worthy of recognition. The trade union having support of the majority of the workers in an establishment and a membership of at least 10 percent of the total numbers in that establishment should be recognised.[85]

Following the declaration of labour policy, on 24 April, 1960, the Martial Law Government promulgated the Trade unions (Amendment) Ordinance, 1960. This Ordinance *inter alia* introduced provisions for recognition of trade unions by employers. Such recognition was not unconditional but subject to fulfilment of conditions laid down under Article 28-B(1). Section 28-B(1) made it obligatory for an employer to recognise a trade union within three months of its

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[84] Ibid, p. 7.

[85] Id.

application if the union fulfilled the conditions (a) to (f) specified in that Section.[86] An employer was bound to recognise if all six conditions were fulfilled. If not, there was no obligation on him to recognise. Even after fulfilling the conditions if an employer refused to recognise, the unions could apply to Industrial Court for such recognition (Section, 28-C). Section 32-A provided that if an employer did not recognise a trade union after the Industrial Court had by order directed such recognition then the employer was punishable with a fine up to two thousand rupees. There was no other penalty. Thus the price to an employer of refusal to recognise a trade union was a maximum of two thousand rupees. On setting aside this sum, he could successfully defeat all the provisions of the Ordinance concerning recognition. Thus if the employers did not change their attitude towards workers' organisations, the Ordinance was of little importance as they could frustrate the object of the Ordinance.

Whatever criticism may be centred against the provisions of recognition

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[86] Section 28 B(1) reads as follows:
An employer shall recognise a Trade Union, if it fulfils the following conditions, namely:
(a) that it is a registered Trade Union and has complied with all the provisions of this Act;
(b) that all its ordinary members are workmen employed in the same industry or in industries allied to or connected with one another;
(c) that, where there are more than one trade union, the number of its members is not less than ten per cent of the total number of workmen employed in such industry or industries, and exceeds the number of members of every other Trade Union in such industry or industries;
(d) that its rules provide for the procedure for declaring a strike;
(e) that its rules provide for the holding of a meeting of the executive at least once in every six months and for holding a general meeting of the Trade Union once in every year; and
(f) that its rules do not provide for the exclusion of any class of workmen referred to in clause (b)) from the membership of the Trade Union.

as provided in the Ordinance, there is no denying the fact that a law providing for recognition of trade unions was long overdue and had been 'under consideration' in the hands of central Government for the last twelve years. In fact a Bill to this effect had been introduced in the Legislature of undivided India before partition and the central Government of Pakistan was committed to continue the proceedings in respect to that Bill in its Legislature. Unfortunately, the Bill never came up before the legislature, although it was discussed about a dozen times in the Pakistan Labour Conference and the Standing Labour Committee.[87] It was a story of delay resulting in nothing. The Parliamentary Government having failed to do anything left the job to be done by the Martial law Government with one stroke.

If the employers in general had acted wisely and shown due respect and recognition of workers' organisations, there probably would have been no occasion for incorporating the provisions of recognition in the Ordinance. The promulgation of the Ordinance indicated that the record of the employers had not been encouraging as it was the Ordinance which aimed to satisfy the needs of the situation.

Under the Ordinance, recognised unions had been given the right to bargain with the management, the terms and conditions of employment - a right for which the workers were struggling for several decades. The rights of the recognised trade unions were provided in Section 28-D in the following terms:

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[87] See, Shafi, M., "Recognition of Trade Unions" in Eastern Worker, Vol. 1. No. 9, 1960. p. 78.

> The executives of a recognised Trade Union shall be entitled to negotiate with the employer in respect of matters connected with employment, unemployment, the terms of employment, and the conditions of work of all or any its members, and the employer shall receive and reply letters of, and grant interviews to, the executive in connection with any such matters except on issues on which as a result of previous discussion or correspondence with the executive the employer has arrived at a conclusion.

The above provision placed the employer under an obligation to negotiate, correspond and discuss issues with recognised trade unions except those issues "on which as a result of previous discussion or correspondence the employer had arrived at a conclusion". Hence, if there had been correspondence in respect of increase in wage and the employer had informed the union executive that he had concluded not to give any increase in wages, then thereafter he could refuse to bargain collectively. Thus, the above provision fell short of Article 4 of the Convention No. 98 which provides for voluntary negotiation between employers' and workers' organisations but nevertheless recognised the workers of their right of bargaining with their employers.

However, in order to protect and promote workers right of association, Section 28-I specified what actions were to constitute unfair labour practice on the part of employers. It provided:

> For the purposes of this Act, it shall be an unfair practice on the part of an employer:
> (a) to interfere with, restrain, or coerce his workmen in the exercise of their rights to organise, form, join, or assist a Trade Union of their choice to engage in concerted activities for the purpose of mutual aid or protection;
> (b) to interfere with the formation or administration of any Trade Union or to contribute financial or other support to it;
> (c) to discharge, or otherwise discriminate against, any officer of a recognised Trade Union because of his being such officer.

It appears that the above provisions gave effect to Article 1 paragraph (2)(b) and Article 2 of Convention No. 98 but not Article 1 paragraph (2)(a).[88] Thus, the Martial Law Government unlike the previous Governments at least began the process of incorporation of the provisions of the Convention. But at the same time the Government, contrary to its obligation to ensure workers' right to elect representatives in full freedom as envisaged in Article 3 of Convention No. 87, restricted the right by amending Section 22 of the Trade Unions Act, 1926 which allowed 50% of the union officers to be outsiders. Section 22 as amended by Section 9 of the Trade Unions (Amendment) Ordinance, 1960 provided:

> A registered Trade Union shall not elect more than twenty five percent of the total number of its officers from amongst the persons who are not actually employed or engaged in the industry with which the Trade Union is connected.

Section 3 of the Trade Unions (Amendment) Ordinance, 1961 brought further restrictions on the 'outsider' leadership by introducing a provision that in order to be union executive these category of persons must be paid as full time workers. Actually, the appointment of 'outsiders' as union executive was viewed by Government to be contrary to the interest of the workers.[89] As such in its labour policy of 1959 the Government expressly declared:

> In order that trade unionism develops in the country on healthy lines, steps shall be taken to ensure that the workers are not exploited by 'outsiders' for their personal and political ends. The Trade Unions Act,

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[88] For the comments of the Committee of Experts on this issue, see below, chapter 5, pp. 203-204.

[89] For trade union leaders' and workers' views on outsider leadership, see below, chapter 6, pp. 283-285.

1926 should be suitably amended in this regard.[90]

Similarly, the 1955 labour policy clearly indicated:

> The percentage of representation of 'outsiders' in the union executive should be reduced from 50% to 25% under the Trade Unions Act.[91]

From the above policy statements of successive Governments and the subsequent promulgation of legislation, it is clear that ratification of Convention No. 87 had very little influence on the policy makers and the Government did not intend to abide by its international obligation of allowing the workers to elect their representatives in full freedom.

However, from our above discussion it is apparent that apart from imposing restriction on election of representatives, the Martial Law Government, by amending the Trade Unions Act, 1926 for the first time gave partial effect to Convention No. 98.

3.2.3 THE POST MARTIAL LAW PERIOD

The Martial Law declared on 7 October 1958 was withdrawn on 8 June 1962 with the adoption of the Constitution of Pakistan 1962. When President Ayub Khan decided to restore constitutional Government and a new Constitution was in the process of being framed the demand for incorporation of a Bill of rights was all most unanimous. The Constitution Commission found that preponderance of opinion (98.39%) was in favour of a Bill of Rights being

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[90] See above, note 65, at p. 6.

[91] See above, note 65, at p. 37.

incorporated in the new Constitution and being made enforceable by the courts as in the previous Constitution.[92] When the Report of the Commission was examined by the Cabinet Sub-Committee, a suggestion was made that the substance of fundamental rights should be laid down within the Constitution as 'principles of law-making', but they should not be enforceable by the Courts. Ultimately this suggestion was approved by those who finally drafted the Constitution. The 'principles of law-making' sought to maintain most of the fundamental rights guaranteed under the 1956 Constitution including freedom of association.[93]

These 'principles of law-making' were merely pious declarations and there was no remedy provided should these principles be violated. It was perhaps meaningless to formulate and declare a long list of rights without providing a machinery to enforce them. The framers of the Constitution tried to justify the new method by citing the case of Britain where Parliament is the custodian of these rights. But in the absence of an English tradition the people could not safely rely on the English method for protecting the basic rights of the citizens.[94] As soon as the Constitution was published there was vehement criticism of the curtailment of the powers of the court in protecting the fundamental rights of the citizen. The issue created a storm of controversy and

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[92] Choudhury, G. W., Constitutional Development in Pakistan, London 1969, p. 240.

[93] See, Paragraph 4 of Chapter I, Part II of the 1962 Constitution.

[94] See, Choudhury, G. W., above note 92, at p. 241.

insistent demands were made on behalf of the people to make these 'principles of law-making' enforceable by the law courts. President Ayub Khan responded to the wishes of the people and a Bill was introduced by the central Government in the National Assembly during its Dhaka session in March, 1963 and the Bill was assented to by the President in January 1964 and came into force under the name of the Constitution (First Amendment) Act, 1963. It brought an important change in the very concept of the Constitution by making fundamental rights justiciable. It conferred substantially the same terms as in the previous Constitution of 1956, a broad range of rights of individuals and groups subject in most cases to reasonable restriction in the public interest. Thus, paragraph 7 of chapter I part II of the Constitution guaranteed freedom of association in the identical terms of Article 10 of the 1956 Constitution restoring the right which was abrogated by the proclamation of Martial Law on 7 October 1958.

The Constitution having come into force, the Supreme Court of Pakistan was called upon to uphold the constitutional guarantee of the right in the case of *Abu A'la Maudoodi v. Government of Pakistan.*[95] The matter came before the Court after two petitions being moved on behalf of the Jamat-e-Islami of Pakistan under Article 98 of the Constitution, one in West Pakistan High Court at Lahore[96] and the other in the High Court of Dhaka[97]- calling in question the

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[95] See, Pakistan Legal Decisions (SC), Vol. XVI. 1964, p. 673.

[96] See, Pakistan Legal Decisions (Karachi) Vol. XVI, 1964, p. 472.

[97] See, Pakistan Legal Decisions (Dacca), Vol. XVI, 1964, p. 795.

Notifications issued by the two provincial Governments on 6 January 1964[98] extending the Criminal Law Amendment Act, 1908 to the two provinces, declaring the Jamat-e-Islami to be unlawful association under Section 16 of the said Act.[99] The petition filed at the High Court of Lahore was dismissed but that presented to the High Court at Dhaka succeeded and it was declared that the Notification issued under Section 16 of the Criminal Law Amendment Act, 1908, had no longer any binding effect and the provincial Government was directed to rescind, cancel or withdraw the Notification. In the appeal before the Supreme Court, the most important question that fell for determination was whether Section 16 of the Criminal Law Act, 1908 was in conflict with the exercise of fundamental right No. 7 guaranteed by the Constitution.[100] Further the point that arose for consideration was whether the Act imposed reasonable restrictions on the right to form an association, possessed by every citizen, in the interest of morality or public order.[101]

The vires of the Act were attacked on the ground that it conferred

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[98] The notification issued by the Governor of East Pakistan was as follows:
"Whereas the Governor of East Pakistan is of opinion that the association known as Jamat-e-Islami has for its object interference of law and order, and that its activities are such as to constitute a danger to the public peace.

Now, therefore, in exercise of the powers conferred by subSection (i) of Section 16 of the Criminal Law Amendment Act, 1908 (Act XIV 1908), the Governor is pleased to declare the Jamat-e-Islami to be an unlawful Association within the meaning of Part II of the said Act".

[99] For the provisions of Section 16 of the Criminal Law Amendment Act, 1908, see above, p. 72.

[100] See above, note 95, at p. 729.

[101] Ibid, at p. 730.

unguided discretion on the Provincial Government to declare an association as unlawful, on the opinion formed subjectively with regard to objective facts and which opinion was not open to judicial review. Secondly, it was urged that this involved condemning an association unheard. There was no provision in that Act for hearing the persons concerned either before or after the declaration of an association as unlawful, so that at no stage the point of view of the persons affected could be presented to relevant authorities. Thirdly, there was no provision for appeal from the order of the Provincial Government, whether of an executive or judicial kind. Fourthly, it was urged that the Notification issued was to last indefinitely. These aspects of the impugned Act, it was argued by the appellants, were enough to condemn it as imposing unreasonable restrictions on fundamental right of citizens to form an association.[102]

The Supreme Court was in agreement with the above submission and accordingly the decision of East Pakistan High Court was upheld. To quote Justice S. A. Rahman:

> After considering the matter in all its aspects I have reached to the conclusion that the impugned Act of 1908 imposes restrictions on the exercise of the fundamental right of forming associations which can not be described as reasonable.[103]

His lordship further emphasised:

> I am therefore, firmly of the opinion that the provisions of Act XIV of 1908 violative as they are, of the exercise of the fundamental right of forming associations, must be condemned as imposing unreasonable restrictions on that right. The Act must consequently be declared to be

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[102] Ibid, at p. 730.

[103] Ibid, at p. 734.

void to the extent of its inconsistency with fundamental right No. 7.

The above decision was indeed a landmark in the annals of exercise of right of association which curtailed the powers of Provincial Government to declare an association as unlawful under Section 16 of the of the Act. The impugned Act conferred an arbitrary power on the Provincial Government to put an end of the existence of an association. This unguided discretion was subject to no check, judicial or otherwise and had the potentialities of becoming an engine of suppression and oppression of functioning any association at the hands of the Government.

In 1965, the Government of East Pakistan enacted the East Pakistan Trade Unions Act, 1965 repealing the Trade Unions Act, 1926. The object was to re-enact the Trade Unions Act, 1926 with certain amendments to provide for a more realistic manner of registration and recognition of trade unions in the province.[104]

A reading of the provisions of the Act shows the other side of the coin. It was far from being 'more realistic' and did not intend to facilitate healthy growth of trade unions and was more restrictive than the repealed Act. The registration of trade unions was made more difficult by imposing new and additional conditions. For example, in order to be registered and recognised, a trade union needed to have a minimum membership of one hundred workers or ten per cent of the total strength of workers employed in the establishment or

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[104] For the Statement of Objects and Reasons of the Act, see, Dhaka Gazette Extraordinary, 26 July 1965, p. 1109.

industry, or which ever was less.[105] On the contrary, under the repealed Act,[106] any seven or more members could apply for registration of a union.

The new Act further limited the scope of 'outsider' participation in the union executive as in Section 24 (1) (c) it was provided that such category of persons must be from amongst those "whose principal advocation is trade unionism". Thus there was an absolute bar on the election of 'outsiders' as officers of trade unions. Only those persons who were employed in the industry or those whose principal advocation was trade unionism (not exceeding 25%) could be elected as officers of the union. The enactment of this provision was in clear violation of Article 3 of Convention No. 87 which advocates for election of representatives in full freedom.

The present Act provided that a union could be required to disclose any financial or other assistance received by it from any source whatsoever either from inside or outside the country.[107] This provision was in clear contradiction to Article 3(2) of Convention No. 87 which provided "public authorities shall refrain from any interference which would restrict this right *of association*[108] or impede the lawful exercise thereof". With regard to recognition of unions the present Act represented a retrograde step in the development of right of

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[105] See, East Pakistan Trade Unions Act,1965, Section, 6(2)(a).

[106] Trade Unions Act,1926, Section 4.

[107] East Pakistan Trade Unions, Act 1965, Section 17.

[108] Italics added.

association since unlike the repealed Act (Trade Unions Act, 1926) as amended by the Trade Union (Amendment) Ordinance, 1960, it did not provide any sanction for non-recognition of unions by employers.[109]

Immediately after the promulgation of the East Pakistan Trade Unions Act, 1965, the conflict between India and Pakistan began and on 6 September 1965 President Ayub Khan, in exercise of the powers conferred by Article 30(1) of the Constitution of Pakistan, 1962, issued a Proclamation of Emergency throughout Pakistan on the plea that a grave emergency existed in which Pakistan was in imminent danger of being threatened by war.[110] With reference to this Proclamation of Emergency and in exercise of power conferred by Article 30(1) of the Constitution the President promulgated an Order which *inter alia* provided that the right to move the Courts for fundamental rights provided for in chapter I of part II of the Constitution dealing with the right to freedom of association and all proceeding in Courts for the enforcement of the said right were to remain suspended for the period during which the Proclamation of Emergency was in force.[111] The Emergency was not lifted even after the Tashkent Agreement of January, 1966, which had formally terminated the conflict with India. Hence, the suspension of enforcement of the right of association continued under the Proclamation of Emergency. Thus, the

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[109] See above, p. 104.

[110] Gazette of Pakistan, Extraordinary, 6 September, 1965.

[111] For the Order under Article 30 of the Constitution of Pakistan,1962, see, Gazette of Pakistan, Extraordinary, 6 September, 1965.

constitutional guarantee of the right as upheld by the Supreme Court in the case of Abul A'la Maudoodi was of little practical value and importance.

Further, from the above discussion it is apparent that the Government while promulgating the Trade Unions Act, 1965, did not take into consideration of its obligations under the ratified Conventions on freedom of association. It is also apparent that during this period the workers' right of association fell short of trade union legislation that existed under the Trade Unions Act, 1926.

3.2.4 THE SECOND MARTIAL LAW PERIOD

Immediately after the India and Pakistan War in 1965, the political situation of the country took a different direction and an anti-Ayub movement was being concretised under the leadership of Sheikh Mujibur Rahman and Z.A. Bhutto in the East and West Pakistan respectively. Under their leadership in the face of a nation-wide popular upsurge, the Emergency was lifted on 17 February, 1969 and ultimately President Ayub Khan had to resign and hand over power to General Yahya Khan, Chief of Army Staff, who proclaimed Martial Law on 25 March, 1969. The direct impact was that the Constitution of 1962 was abrogated.[112] On 4 April, 1969 the Provisional Constitution Order was passed which revived the Constitution but *inter alia* abrogated paragraph 7 of chapter I of Part II of the Constitution dealing with freedom of association.[113]

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[112] For the Proclamation of Martial Law, 25 March, See, Pakistan Legal Decisions (Central Statutes) ,1969, p. 42.

[113] Ibid, p. 41.

Further, a Martial Law Regulation[114] prohibited strikes, lockouts and agitations in educational institutions, public utility works and installations, services and industrial concerns.

The imposition of Martial Law was the response to a profound political crisis which was rooted in a deep economic and social crisis as well as political discontent. According to Shaheed:

> None of the established political leaders opposed its imposition. In fact, they welcomed it at a time when the political situation had rapidly moved beyond their control with the masses, though leaderless, making a shattering impact on the Pakistan political scene.[115]

The turbulent period preceding the imposition of Martial Law had brought an unprecedented degree of working class militancy to the surface of the labour movement which prompted the Government to offer a new organisational framework to contain this militancy.[116]

In view of the above situation, a Labour Conference was convened by the Martial Law regime on 4 May 1969 and as a result of its deliberations a new labour policy was announced on 5 July, 1969 by Air Marshal M. Nur Khan.[117] The policy[118] made a bold admission that the previous policies had failed due to the lack of adequate machinery for their implementation and promised that

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[114] Ibid, p. 48, Regulation No. 18.

[115] See, Shaheed, Z.A., above note 80, at p. 433.

[116] Ibid, p. 433.

[117] Amjad, R. and Mahmood, K., Industrial Relations and Political Process in Pakistan 1947-77, Geneva 1982, p. 19.

[118] See, Labour Policy 1969, in Shafi, M., Labour policy of Pakistan, Karachi 1969.

the policy would be supported by the necessary machinery for its implementation. It also recognised that it was only through his membership of a trade union that a worker could safeguard his rights and further his interests. The main reasons for the slow growth of trade unions had been enumerated by the policy. They were, first, the acceptance of a mode of tenant-landlord relationship in industrial life by the workers. Secondly, the attitude of the employer in looking upon the trade unions as instruments for extortion rather than as institutions for peaceful relations of conflicts and higher productivity. Thirdly, the attitude of the Government in discouraging and prohibiting expression of industrial conflict rather than trying to solve it and its failure to realise that conflict could not be dissolved by suppression, but only through a process of mutual give and take which was possible through strong trade union institution. While emphasising the need for trade unions the policy stated:

> The objective of an Industrial Relations system is to provide a framework within which the conflicts inherent in a worker-employer relationship may be peacefully resolved. The key to a successful system of industrial relations, particularly in a country with large surplus labour force, lies in the growth and functioning of a strong and representative trade union movement.[119]

It was further emphasised in the policy:

> If a successful system of industrial relations is to operate in Pakistan, it will be necessary to give every encouragement to the growth of a strong trade union movement. To do so, it will be necessary to make our laws, particularly those relating to the formation and working of trade unions far less restrictive than they are at present.[120]

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[119] Ibid, pp. 2-3.

[120] Ibid, p. 4.

Thus, the Government admitted that the existing laws were restrictive. It is however, important to note that the policy did not specify that the Government was going to remove the restrictions but only make 'less restrictive'.

Like the policy of 1959, the new policy did not make any reference to the ILO Conventions and Recommendations, though frankly admitted the retarded position of right of association and the failure of earlier Governments in this regard. Now the question arises what was the motive behind the declaration of such 'radical' policy immediately after promulgation of Martial Law. According to G. W. Choudhury, the explanation lies in the power ambitions of Nur Khan within the ruling junta. He "wanted to create an image as against Yahya, by introducing 'radical' reforms".[121] As a result of that Nur Khan was soon divested of his position of Deputy Chief Martial Law Administrator.[122] According to Amjad and Mahmood, "the aim of the Martial Law Government had been mainly to blunt the militant stance of the workers and to try to placate them".[123]

However, once the policy was announced the demand for its immediate implementation became widespread and led to unrest and agitation amongst workers. As a result, the Industrial Relations Ordinance, 1969 was promulgated on November 3, 1969 repealing the laws on trade unions and industrial deputes.

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[121] Choudhury, G.W., The Last Days of United Pakistan, London 1974, p. 51.

[122] See, Shaheed, Z. A., above note 80, at p. 439.

[123] Amjad, R. and Mahmood K., Industrial Relations and the Political Process in Pakistan 1947-1977, Geneva 1982, p. 22.

It is remarkable to note that in the realm of labour law, the term freedom of association was used for the first time in this Ordinance.[124] In framing workers' right of association, the framers of the Ordinance theoretically relied heavily on the ILO Convention concerning Freedom of Association and Protection of the Right to Convention, 1948 (No. 87), as almost all the provisions of the Convention were incorporated in the Ordinance. Below, we will see how it had been reflected.

Following Article 2 of Convention No. 87, Section 3(a) and (b) provided that workers and employers, without distinction whatsoever, shall have the right to establish, and subject only to the rules of the organisation concerned, to join association of their own choosing without previous authorisation. This provision did not make any departure from Article 2 of the Convention, except using the words 'join associations' instead of using the Convention words 'join organisations'. This virtually made no difference in guaranteeing the right.

Following Article 3 of the Convention, Section 3(c) provided that trade union and employers' association shall have the right to draw up their Constitution and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. It is of interest to note that unlike Article 3(2) of the ILO Convention, it did not contain any clause that public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. Further, it did not

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[124] See, Section 3 of the Ordinance.

contain any clause following Article 4 of Convention No. 87 that workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Following Article 5 of Convention No. 87, Section 3(d) provided that workers' and employers' organisation shall have the right to establish and join federations and confederations and any such organisation, shall have the right to affiliate with international organisations and confederations of workers' and employers' organisations. However, no legal provisions or regulations were provided in the Ordinance for such affiliation. Hence, in order to form a federation or confederation or to affiliate themselves with international organisations, the workers' and employers' organisation had complete freedom. The Industrial Relations Ordinance, 1969, unlike Article 6 of Convention No. 87 did not make it clear whether the above provisions granting freedom of association would apply to federation or confederation of workers' and employers' organisations.

Like Article 8 of Convention No. 87, Section 4 of the Ordinance stated that the rights provided in Section 3 concerning freedom of association were subject to the condition that workers and employers must respect the law of the land in exercising the right. But the framers of the Ordinance did not take into consideration that clause 2 of Article 8 of Convention No. 87 provided that the law of the land shall not be such as to impair nor shall it be applied as to impair, the guarantees provided for in this Convention.

For the first time, in the Industrial Relations Ordinance, 1969, the concept of recognition of trade union was changed to a concept of collective bargaining agent.[125] Section 2(v) of the Ordinance defined collective bargaining agent as follows:

> Collective bargaining agent, in relation to an establishment or industry, means the trade union of workmen which, under Section 22, is the agent of the workmen in the establishment or, as the case may be, industry in the matter of collective bargaining.

Under Section 22, two methods were described for forming collective bargaining agents. In the first case, where there was only one trade union (registered) in an establishment, then that union was to be deemed to be the collective bargaining agent for that establishment. In the second case, if there were more than one union (registered) then there was to be a secret ballot, and the union obtaining highest number of votes was to be declared collective bargaining agent by the registrar. Section 22(6)(b) of the Ordinance laid down rights of the collective bargaining agent in the following manner:

> The executive of a trade union ... which is a collective bargaining agent ... shall be entitled to undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the terms of employment or conditions of work of any person.

Thus, it appears that the above provisions of the Ordinance according to Article 4 of Convention No. 98 introduced machinery for voluntary negotiation between

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[125] It may be recalled that the Provincial Government of East Pakistan enacted the Trade Unions (Recognition), Ordinance, 1958 making provision for recognition of registered trade unions by employers (Section 3). The Central Government in the year 1960 amending the Trade Unions Act of 1926 incorporated with modification these principles of recognition of trade unions in Section 28-B. Further, the East Pakistan Government, in the Trade Unions Act of 1965 with little modification, introduced the same provision for recognition of trade unions (Section 33).

employers and workers organisations. While the ILO advocates collective bargaining as a general principle and while Governments which have ratified Convention No. 98 are under the obligation to promote and encourage collective bargaining, it is left to each country to decide what is the best machinery to be established in order to put this principle into practice. No set pattern has been fixed in this regard and the methods and practices followed in the various countries of the world vary greatly as regards the conclusion, the contents and the effects of collective bargaining, as well as the level at which they are concluded.[126]

In the realm of industrial relations the real concept of institutionalised collective bargaining was introduced in Pakistan in 1969, which according to Rizvi was "as a direct offspring of labour unrest and a general demand for ameliorating the lot of workers".[127] It was also a manifestation of the Government's policy aimed at giving a new momentum to the relationship of workers' and employers. The pre-requisite of a successful system of collective bargaining included a strong and representative trade union movement, responsible and responsive organisations of employers and a clear definition of the Government's role in the operation of the system of industrial relations. Collective bargaining in its new form and content conferred a large measure of

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[126] ILO, Report of the ILO/SIDA Mission on Workers' Participation in Management in Bangladesh, Geneva 1973, p. 53.

[127] Rizvi, S. A., Industrial Relations and Development in Pakistan, Bangkok 1979, p. 24.

industrial freedom and democracy and demanded maturity and increased responsibility on the part of trade union, employers and Government.

Like the earlier laws[128] it provided for registration of trade unions which was optional.[129] However, the serious set back was that following the earlier laws it also accorded rights and privileges only to registered unions, so if a union decided not to register it would not be immune from criminal and civil liability which registered unions would enjoy under the Ordinance.[130] Regarding 'outsider' participation in the union executive, following the repealed Act, the new Ordinance under Section 7 allowed 25%, but persons in this category, as in the earlier laws[131] were not required to be full time paid trade union workers having trade unionism as their principle advocation. Though, it was less restrictive than the earlier laws, yet it was contrary to the requirements of Article 3 of the ILO Convention No. 87 as full freedom to elect the representatives of unions was not provided.

However, an important guarantee of the workers' right of association was outlined in Section 15(1) of the Ordinance. It provided:

> No employer or trade union of employers and no persons acting on behalf of either shall:
> (a) impose any condition in a contract of employment seeking to

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[128] The Trade Unions Act,1926 and the Trade Unions Act, 1965.

[129] The Industrial Relations Ordinance, 1969, Section 5.

[130] Ibid, Sections 17 and 18.

[131] See, Section 22 of the Trade Unions Act, 1926 as amended by Section 3 of the Trade Unions (Amendment) Ordinance, 1961 and Section 24 of the Trade Unions Act, 1965.

> restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union; or
> (b) refuse to employ or refuse to continue to employ any person on the ground that such person is, or is not, a member or officer of a trade union; or
> (c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union; or
> (d) dismiss, discharge, remove from employment or threaten to dismiss, discharge or remove from employment a workman or injure or threaten to injure him in respect of his employment by reason that the workman-
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> (i) is or propose to become, or seeks to persuade any other person to become, a member or officer of a trade union; or
> (ii) participates in the promotion, formation or activities of a trade union;
>
> (e) induce any person to refrain from becoming, or cease to be a member or officer of a trade union, by offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person.

The above provision has its source in Article 1 of Convention No. 98. Unlike earlier legislative efforts,[132] the present provision completed the task of incorporating the essence of Article 1 of Convention No. 98, providing adequate safeguards for the workers against acts of anti-union discrimination in respect of their employment.

In summary, the IRO, 1969 passed by the second military regime of Pakistan which came to power not through armed rebellion but as a result of political unrest, on the whole offered a progressive piece of legislation in the spectrum of exercise of the right of association. This legislative gesture may be

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[132] See, Section 28-I of the Trade Unions Act, 1926 as amended by Section 11 of the Trade Unions (Amendment) Ordinance, 1960 and Section 40 of the Trade Unions Act, 1965.

said to have embarked on a laudable journey towards compliance with the Conventions Nos. 87 and 98 which was overdue since the Conventions stood ratified.

CHAPTER 4

THE RIGHT TO FREEDOM OF ASSOCIATION IN INDEPENDENT BANGLADESH: AN ANALYSIS OF LEGISLATION AND POLICY

Having outlined and analysed in the last chapter the development of legislation and policy on freedom of association in pre independence Bangladesh, the present chapter attempts to explore the development of the right to freedom of association in independent Bangladesh i.e., since 1971. This chapter will investigate whether the political independence of Bangladesh resulted in elevating the workers' right to freedom of association in conformity with the ILO Conventions in comparison to what was prevalent during Pakistani period. Attempts will be taken further to assess the compatibility of the legislation and policy with that of the ILO standards.

4.1 THE BEGINNING OF A NEW ERA

After emerging as an independent state, the Government of the People's Republic of Bangladesh adopted the entire body of labour legislation that was in force in the territory before the Declaration of Independence on 26 March,

1971.[1] With regard to international obligations in relation to the ILO Conventions, when the Government of Bangladesh applied to the ILO for membership,[2] it formally accepted the obligations of the Constitution of the ILO and pledged to be bound by the Conventions which were in effect in its territory at the time of declaration of independence. Thus, the citizens of this newly independent state were assured, *inter alia,* of the full enjoyment of the right to freedom of association in conformity with the Right of Association (Agriculture) Convention, 1921 (No. 11), the Convention Concerning Freedom of Association and Protection of the Right Organise Convention, 1948, (No. 87) and Right to Organise and Collective Bargaining Convention, 1949, (No. 98).

Having achieved independence, the year 1972 began with much expectation and enthusiasm amongst all sections of the society, particularly the working class. The workers were directly involved in the liberation struggle for political independence[3] and thousands of them went through a process of psychological and ideological transformation. They knew how to handle

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[1] See, Laws Continuance Enforcement Order,1971, in Dhaka Law Reports, (Bangladesh Statutes), Vol. 24, 1971-72, p. 3; Bangladesh (Adaptation of Existing Laws) Order, 1972, in Dhaka Law Reports (Bangladesh Statutes) Vol. 24, 1971-72, p. 135.

[2] For membership of Bangladesh in the ILO, see above, chapter 2, pp. 30-34.

[3] The contribution of the working class in the war of liberation has been recognised by the Government in its labour policy declared on 27 September, 1972, which reads as follows: "Government and people are grateful to the working class population of the country for their indomitable support during the war of liberation movement. It is also gratifying to note that a large number of workers crossed over and took part in the liberation movement and fought valiantly for the liberation and those who remained inside also rendered active support to the liberation movement". See, Labour Policy, 1972.

weapons, how to fight and lastly they were also assured by the political leaders that the future Bangladesh would ensure their material and social development. All these naturally raised their level of expectation to a certain extent which was difficult to reach in a war-devastated country within a very short period of time.

Thus, before entering into the subject of right to freedom of association, it is necessary to recall briefly the situation that prevailed in Bangladesh after the independence of the country. The atmosphere in independent Bangladesh was well summarised by the Report of the ILO/SIDA Mission, headed by Mr. Givry, Chief of the Social Institutions Development Department of the ILO, who visited Bangladesh in 1973. He reported in the following terms:

> The Government was faced with a war-torn economy, disrupted communication system, social dislocation due to the return of hundreds of thousands of industrial workers from the refugee camps in India after about nine months. They were driven out from the factories by the 'settlers' with the help of Pakistani Army in 1971. When they returned home, they found their houses either destroyed or burnt down.
> Industrial undertakings, most of which were owned and managed by West Pakistani employers were suddenly abandoned by these owners and managers and left uncared.
> Many workers, during their refugee life suffered privations, hunger and some of them took part in guerilla activities. They returned with the liberation forces and found that the `settlers' fled away along with the Pakistanis. They were thus inclined to take over the enterprises in which they worked. Some Bengali owners were thrown away from their establishment and their industries were also taken over by the workers on the plea that a step towards socialism.The local Bengalee middle class people who were still serving in the enterprises during the war of liberation were regarded as 'collaborators' and the workers had no respect for them which resulted in complete indiscipline in the rank and file.[4]

This state of affairs, it appears, had contributed towards the imposition of

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[4] ILO, Report of the ILO/SIDA Mission on Workers' Participation in Management in Bangladesh, Geneva 1973, pp. 6-7.

certain restrictive laws by the Government immediately after independence. Accordingly, one of the first restrictive measures was the Presidential Order No. 55 of 29 May, 1972,[5] which banned all strikes and unfair labour practices in the nationalised industries.[6] It was provided in that Order that no workmen or trade union of workmen and no person acting on behalf of such trade union shall in any nationalised industries resort to strike from the date of commencement of the Order and such further period, which in the opinion of the Government was warranted in the interest of the national economy, as would be notified in the official Gazette from time to time.[7] It was further provided that no workmen or trade union of workmen and no person acting on behalf of such trade union by using intimidation, coercion, pressure, threats, confinement to a place, physical injury, disconnection of phone, water or power facilities and such other methods compel or attempt to compel the employer to sign a memorandum of settlement or agreement, to make any payment or other benefits.[8] It may be recalled that Convention No. 98 has been designed to ensure and promote voluntary

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[5] See, Bangladesh Nationalised Enterprises and Statutory Corporations (Prohibition of Strikes and Unfair Labour Practice) Order, 1972, in Dhaka Law Reports, Vol. 24, 1972, p. 146.

[6] For a detailed account of the background, circumstances and scope of the nationalisation programme, see, Sobhan, R. and Ahmad, M., Public Enterprise in an Intermediate Regime: A study in the Political Economy of Bangladesh, Dhaka 1980 chapter 8; See also, Bangladesh Industrial Enterprises (Nationalisation) Order, 1972, in Dhaka Law Reports, Vol. 24, 1972, p. 24.

[7] For the text of the Order, see, Dhaka Law Reports, Vol. 24, 1972, p. 146.

[8] See, Section 3, Bangladesh Nationalised Enterprises and Statutory Corporations (Prohibition of Strikes and Unfair Labour Practice) Order, 1972, in Dhaka Law Reports, Vol. 24, 1972, p. 146.

negotiation and collective agreement,[9] not agreement through intimidation, coercion, pressure, threats etc. Thus, the imposition of agreement by the above means was beyond the scope of Convention No. 98. The prohibition of strikes in nationalised enterprises undoubtedly violated workers' right of association as the Committee on Freedom of Association[10] has always regarded the right to strike as constituting a fundamental right of workers and their organisations if undertaken in furtherance of defending their economic interests.[11] The ban on strikes only existed for six months.[12] However, even if it is argued that in view of the national interest[13] to increase production, the interim measure may have been justified to reconstruct the national economy, one has to bear in mind that according to the ILO Committee on Freedom of Association, a general prohibition of strikes seriously limits the means available to Trade Unions to further and defend the interests of their members and the right to organise their

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[9] Right to Organise and Collective Bargaining Convention, 1949, Article 4.

[10] For details about the Committee, see below, chapter 5.

[11] ILO, Committee on Freedom of Association, 27th Report, Case No. 156, Para 287; 172nd Report, Case No. 885, Para 384; 214th Report, Case No. 1067, Para 208.

[12] The ban on strikes was automatically lifted on 29 November, 1972, as it was not subsequently extended by Government Gazette Notification.

[13] The Prime Minister in a press statement on 9 February, 1972, urged the workers to maximise the production and to entrust themselves in the task of nation reconstruction. He particularly referred to the following: (a) The workers should not allow any consideration to stand in the way of putting the wheels of industry for production; (b) They should exert themselves to the utmost production; (c) For the time being the workers should accept the existing wage rates and other benefits. See, Ahmad, K., Labour movement in Bangladesh, Dhaka 1978, pp. 100-101.

activities.[14] Accordingly, protest came from the workers and one trade union federation namely, Bangladesh Workers Federation lodged a complaint (Case No. 729)[15] to the ILO Committee on Freedom of Association against promulgation of the Order, details of which will be discussed below in chapter 5.[16]

4.2 A NEW POLICY FOR LABOUR

The independence of Bangladesh brought some changes in the context Government's policy towards labour. Immediately after independence, the Prime Minister made a press statement on 9 February, 1972, which reads as follows:

> I assure our workers that the basic goal of the socialist economy, which we are committed to achieve, will be securing the rights of workers and ensuring their welfare. A plan is being prepared where by measures of nationalisation would be combined with new arrangements to ensure workers participation in the management of industries.[17]

Within this framework of reference, on 19 February, 1972, the Government appointed a committee, known as the Kamruddin Committee[18] to prepare a report on 'Workers Participation in Management'. Based on the

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[14] See above, note 11, 149th Report, Cases Nos. 676 and 803, para 79; 218th Report, Case No. 1115, para 259; 233rd Report, Case No. 1219, para 653.

[15] See, ILO, Official Bulletin, Vol. LVII, Series B, No. 1 (Supplement), 1974, pp. 288-90.

[16] See below, chapter 5, pp. 221-223.

[17] Quoted by Khan, M. M., and Ahmed, M., Participative Management in Industry, Dhaka 1980, p. 56.

[18] The Committee was headed by Mr. Kamruddin Ahmed who was at that time president of Bangladesh Employers' Association.

recommendations of the Committee, on 27 September, 1972, Mr. Zahur Ahmed, Minister in charge of labour announced a new labour policy.

The policy significantly departed from the earlier policy of 1969[19] on the basis of which the Industrial Relations Ordinance, 1969, was promulgated. The new policy differentiated between private and public sector workers in respect of industrial relations. The right to collective bargaining was allowed to private sector workers but such rights were not granted to public sector workers. In relation to public sector industries, the policy proposed the constitution of Management Board[20] and Management Council[21] to resolve differences between labour and management through joint consultations instead of collective bargaining. The policy further envisaged as follows:

> Government feel that as there will be greater participation of workers in the management of nationalised industries, the differences will be resolved through joint consultative methods in the Management Board. In the circumstances there will be no necessity for collective bargaining by workers employed in industries nationalised or taken over by Government.[22]

Convention No. 98 is in no way limited to the private sector. It also applies to

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[19] For a detailed discussion of the Labour Policy, 1969, see above, chapter 3, pp. 117-119.

[20] The policy described Management Board as follows: "There shall be a top Management Board in nationalised/taken over industries consisting of two representatives each from employers and workers and one from Financial Institution for smooth functioning of industries".

[21] The policy described Management Council as follows: "There shall also be workers Management Council at each industrial plant with equal number of management and workers to deal with the day to day problems and also disciplinary cases relating to the workers".

[22] See, Labour Policy, 1972.

the public sector of the economy with the exception of public servants engaged in the administration of the state.[23]

Further, the right to strike as a means of settling disputes was not recognised in the policy but it was emphasised that differences between labour and management would be settled by peaceful means. It is nothing short of saying that industrial strike and collective bargaining is not a peaceful and constitutional method of settling disputes between labour and management. In order to justify the strategy of curtailing the right to strike and collective bargaining the Government adopted an idealistic approach by stating:

> ... as the fruits of the nationalised industries will be fully utilised for benefits of the entire population of the country ... there should not be any conflicts of interests between management and workers.[24]

Soon after the declaration of the policy there was serious resentment of and opposition to the policy amongst the workers, mainly due to the fact that the collective bargaining in matters of wages and fringe benefits was taken away.[25] Further, the policy was not accepted by the workers as it brought down the activities of trade unions to the state of a welfare organisation.[26] According

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[23] See, Article 6 of Convention No. 98.

[24] See, Labour Policy, 1972.

[25] Mortuza, G., "Labour Laws: Policies and Principles with Particular Reference to Bangladesh", in Industrial Relations Laws Policies and Principles, Dhaka 1982, p. A 14.

[26] The policy read as follows: "The absence of collective bargaining by workers in nationalised or taken over industries will not mean cessation of trade union activities. The functions of the trade unions will be: (i) In relation to ... nationalised and taken over industries, to promote measures for well-being of the working class, take care of safety and protection of labour at work place, provide training, education and other

to Ahmed "even the Jatio Sramik League, the labour front of the ruling party bitterly criticised it, as it was not in conformity with the ILO Conventions Nos. 87 and 98".[27] Against this restrictive policy Bangladesh Workers Federation filed a complaint (Case No. 729)[28] to the ILO Committee on Freedom of Association.[29] After the Constitution of the People's Republic of Bangladesh had come into force on 16 December 1972, the Government decided that the implementation of the labour policy should be deferred till it was reviewed in the light of the Constitution and the Government was satisfied that the policy was not in violation of any provision of the Constitution.[30]

4.3. CONSTITUTIONAL GUARANTEE OF THE RIGHT

Soon after the declaration of the labour policy, the People's Republic of Bangladesh adopted its new Constitution. Following the modern trend, the Constitution contains in Part III a justiciable Bill of Rights.[31] It may be recalled that in respect of the right to freedom of association, the Pakistan Constitution

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welfare facilities to the workers and thereby create conditions for higher productivity in the over-all interest of the country ... ."

[27] Ahmed, M., "Labour Policy and Collective Bargaining", in National Seminar on Trade Union Development, Dhaka 1980, p. 18.

[28] See above, note, 15.

[29] For discussion of the case, see below, chapter 5, pp. 221-223.

[30] ILO, Report of the ILO/SIDA Mission on Workers' Participation in Management in Bangladesh, Geneva 1973, p. 15.

[31] Article 44 of the Constitution guarantees the right to move to the Supreme Court in accordance with Article 102(1) for enforcement of the fundamental rights.

of 1956 guaranteed this right in Article 10 of part II and exactly the same provision was also incorporated in right No. 7 of Part II of the Pakistan Constitution, 1962, which read as follows:

> Every citizen shall have the right to form associations or unions, subject to any reasonable restriction imposed by law in the interest of morality and public order.

Exactly the same provision has also been incorporated in Article 38 of the Constitution of Bangladesh, 1972. But in order to make this provision consistent with one of the fundamental principles of state policy, i.e., the principle of 'secularism' as provided in Article 12 of the Constitution, a proviso was added to Article 38 which limited this right in the following manner:

> Provided that no person shall have the right to form, or be a member or otherwise take part in the activities of, any communal or other association or union which in the name or on the basis of any religion has for its object, or pursues, a political purpose.

Thus, the framers of the Constitution, had not only laid down the principle of right to form association but also provided the grounds and the extent of restriction of the right.

The principle of free choice of trade unions is an essential element of freedom of association which has been denied by the proviso to Article 38. This is clearly incompatible with Article 2 of Convention No. 87.[32] The Committee on Freedom of Association[33] has emphasised that it attaches importance to the fact that workers and employers should in practice be able to form and join

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[32] See, Convention on Freedom of Association and Right to Organise Convention, 1948.

[33] For details about the Committee on Freedom of Association, see below, chapter 5.

organisations of their own choosing in full freedom.[34] The Committee also observed that workers should have the right, without distinction whatsoever - in particular without discrimination of any kind on the basis of political opinion - to join the organisation of their own choosing.[35]

However, with the change of Government on 15 August, 1975,[36] the restrictive clause of the right to freedom of association, i.e., the proviso to Article 38 of the Constitution, was omitted by the Second Proclamation Order No. III of 1976. The restrictive clause being omitted, the constitutional guarantee of the right to freedom of association has been brought in conformity with the ILO Convention No. 87 as Article 8 of the Convention envisaged that in exercising the rights the workers and employers and their representatives shall respect the law of the land and the law of the land shall not be such as to impair the guarantees provided in the Convention.

The expression 'reasonable ' used in Article 38 implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a balance between the

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[34] ILO, Committee on Freedom of Association, 6th Report, Case No. 3, Para 1024; 157th Report, Case No. 827, Para 216.

[35] ILO, Committee on Freedom of Association, 126th Report, Case No. 636, Para 25; 187th Report, Case No. 857, Para 268.

[36] The constitutional Government under Seikh Mujib was overthrown on 15 August, 1975 by a military *coup d'etat*.

freedom granted and the social control permitted by the Constitution, it must be held to be wanting in that quality. Reasonableness is itself a relative term. What is reasonable in one given set of circumstances may well be unreasonable in another different set of circumstances. Thus, there can be no hard and fast rule for determining the matter which may be considered for testing the reasonableness applicable to all cases. In the opinion of Justice Hamoodur Rahman:

> It will certainly depend upon the nature and extent of the restrictions sought to be imposed, the nature of the circumstances in which the restriction is to be imposed, the evil to be prevented or remedied, the necessity of urgency of the action proposed to be taken and the nature of the safeguards, if any, provided to prevent possibilities of abuse of power.[37]

The use of the word 'restriction' in Article 38 by itself indicates that the primary and initial test is that the restrictions cannot amount to a complete denial or total prohibition of the right for all times to come or for an indefinite period. According to Justice Hamoodur Rahman:

> By its very nature, the use of the word 'restriction' makes the extent of the encroachment a relevant factor in determining the reasonableness thereof. This again cannot be divorced from the nature of the right sought to be restricted and the nature of the restriction itself, for, under certain circumstances even the total provision, if it is for a limited period or to meet a specific well defined mischief, may be upheld as a reasonable restriction. Thus both the nature of the restriction imposed and its extent would be relevant for determining the validity of a law encroaching upon a fundamental right.[38]

This means that under certain circumstances it would be legitimate for

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[37] *Abul A'la Maudoodi V. Government of Pakistan*, in Pakistan Legal Decisions (SC), Vol. XVI, 1964, p. 788.

[38] Ibid, p. 787.

Government to regulate the right in order to protect other rights, because no one has a fundamental right to immorality, obscenity, commission of offence, or doing of other illegal and unlawful acts. The right to freedom of association is, therefore, subject to this important qualification that reasonable restriction on its exercise may be imposed by the law in the interest of morality or public order. Hence, the right to freedom of association, like other rights, is a qualified freedom and is available within the limits prescribed by the Constitution. Thus Governmental measures bearing upon the right to freedom of association must ultimately pass the judicial test of reasonableness and the Constitution did not leave everything to the discretion of the legislature.

The right under Article 38 implies that several individuals having a community of interests can join together to form a voluntary association for the furtherance of a common lawful object. This right along with other rights, described as fundamental rights under Part III of the Constitution, have been guaranteed by declaring that the state shall not make any law inconsistent with any provision of part III of the Constitution, and any law so made shall to the extent of inconsistency be void.[39] Thus, it implies that so long as the purpose for which an association or union is formed is lawful, law imposes no restriction on the association or union. In this sense the right to form an association is a Constitutional right.

Regarding formation of an association the Supreme Court of Bangladesh

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[39] See, Article 26 of the Constitution of Bangladesh.

in the case of *Asaduzzaman v. Bangladesh*[40] has emphasised that:

> The word 'form' in Article 38 does not limit the exercise of that right to the formation of an association. The right to form an association must of necessity imply the right to continue and carry on the activities of the association as well.[41]

But at the same time the court clearly specified:

> Article 38 cannot, however, be involved for support, sustenance or fulfilment of every object of an association.[42]

Accordingly, it has been held in the case of *Abu Hossain v. Registrar of Trade Unions*:

> The constitutional provisions do not guarantee the right of registration *of Trade Unions*[43] for the purpose of working as a bargaining agent under the labour laws which thus can be regulated as it is not so guaranteed under the provisions of Article 38 of the Constitution.[44]

It must be emphasised that the Constitution does not give the unions any privileged position in the labour-employer relationship. A member of a union is on the same footing so far as the law is concerned as any other person seeking employment and there is no compulsion on the employer to treat a member of a union on a footing different from non-members of a union. It is for the union to protect the interests of its members, the Constitution does not give any direct protection to them.

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[40] See, Dhaka Law Reports (AD), Vol. 42, 1990, p. 144.

[41] Ibid, p. 151.

[42] Id.

[43] Italics added.

[44] See, Dhaka Law Reports, Vol. 45, 1993, p. 196.

4.4 LIMITATION OF THE RIGHT TO COLLECTIVE BARGAINING IN PUBLIC SECTOR INDUSTRIES

The liberation of Bangladesh marked a new phase in the socio-politico-economic milieu of the country. In anticipation of establishing a socialistic economy,[45] the Government of Bangladesh nationalised 85% of industries. This step ultimately ushered in a new dimension in the field of labour management relations in general and collective bargaining in particular in the public sector industries.

The Government, being the largest owner of industries, preferred to bring some sort of uniformity in wages and fringe benefits of the nationalised industries.[46] To this end, the Industrial Workers' Wages Commission was constituted on 1 June, 1973, in order to review the wage structure, including fringe benefits, and to make suitable recommendations for them. In September 1973, the Commission submitted its recommendations fixing wages, bonuses, medical allowances, house rent allowances, conveyances allowances etc. for workers of public sector manufacturing industries.[47] It is apparent from the

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[45] Article 10 of the Constitution of the Peoples' Republic of Bangladesh read as follows: "A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man". Further, Article 13 read as follows: "The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms: (a) State ownership, that is ownership by the state on behalf of the people through the creation of an efficient and dynamic nationalised public sector embracing the key sectors of the economy".

[46] Alam, F., "Collective Bargaining in Bangladesh's Jute Industry", in Panjab University Management Review, Vol. IV, Nos. 1-2, 1981, p. 66.

[47] For details, see, Report of the Industrial Workers' Wages Commission, 1973.

Report that the Commission took care of most of the terms and conditions of service of workers which are generally considered as subject-matter of collective bargaining by workers.

The recommendations of the Committee were accepted by the Government and for implementation of the new wage scales, a new law, the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1973, was promulgated.[48] Section 3(1) of the Ordinance reads as follows:

> Notwithstanding anything contained in the Industrial Relations Ordinance, 1969, (xxiii of 1969), or in any other law or any rule, regulation, by-law, agreement, award, settlement, custom, usages or terms and conditions of service for the time being in force, the Government may, with a view to implementing such recommendations of the Commission as may be accepted by it, by notification in the official Gazette, determine the wage, bonus, medical allowance, house rent allowance, conveyance allowance and leave which shall be payable or admissible to any worker employed in any State-Owned Manufacturing industry, and no such worker shall receive or enjoy, and no person shall allow to such worker any wage, bonus, leave, medical allowance, house rent allowance and conveyance allowance in excess of what is so determined.

Further, it provided that all agreements, settlements and awards, whether made before or after the commencement of this Ordinance, in respect of any matter determined by the Government under Section 3(1) shall be void.[49] Accordingly, it was a punishable offence for any person to receive or enjoy any wage, bonus, medical allowance, house rent allowance, conveyance allowance in excess of

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[48] For the text of the Ordinance, see, Dhaka Law Reports, Vol. 26, 1974, p. 134.

[49] Ibid, Section 4.

what was determined by the Government.[50]

Later, on 5 February, 1974, the 1973 Ordinance was repealed by another piece of legislation which was named the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974. The new Act covered all the provisions of the repealed Ordinance except the clause relating to punishment and declared that the Act has been promulgated to give effect to the Fundamental Principles of State Policies set out in Article 10 of the Constitution of the People's Republic of Bangladesh.[51]

It appears that the provisions of the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1973, followed by the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974, were not in accordance with the provisions of Convention No. 98, as both restricted the right of collective bargaining with regard to wages and fringe benefits in the state-owned manufacturing industries and thus curtailed what is considered to be a basic trade union right. The question may, however, be raised as to whether the power given by the Ordinance of 1973[52] and the Act of 1974[53] to the Government to determine unilaterally the wages and terms of employment of industrial workers in the

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[50] Ibid, Section 5.

[51] For the text of Article 10, see above, p. 141.

[52] State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance,1973.

[53] State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974.

state-owned manufacturing industries was considered as a 'temporary measure' dictated by the circumstances of Bangladesh at that juncture,[54] or as a 'permanent feature' of the new labour policy of 1972, based on the assumption that under a system of public ownership of undertakings, in the management of which the workers will be called upon to participate, there is no need for collective bargaining.[55]

If the first option of the alternative is chosen, i.e., if it was a 'temporary measure', it can be argued that there were a number of reasons which might have justified temporary suspension of collective bargaining with regard to wages and fringe benefits in the prevalent circumstances of Bangladesh at that time. The ILO/SIDA Mission Report of 1973[56], depicted the situation of post-independent Bangladesh in the following terms:

> Management people were wrongfully confined and forced to enter into agreements which were binding on management under the law and by that way made them pay much more money than the companies could offer.[57]

The armed struggle which resulted in the independence of Bangladesh not only attributed to the destruction of economic potential of the country but also caused social problems such as change of attitude and conduct of some people which may be inherent to the situation of a newly independent country having won its

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[54] See above, pp. 128-129.

[55] See, Labour Policy,1972.

[56] ILO, Report of the ILO/SIDA Mission on Workers Participation on Management in Bangladesh, Geneva 1973.

[57] Ibid, p. 7.

independence through armed struggle. Therefore, recourse to coercion and physical violence was considered by some as the best means to obtain economic advantages. For many workers, collective bargaining seemed to be exclusively looked at as a means of submitting to the owners a 'charter of demands' and exercising intimidation, threats or even physical pressure on them until they accepted to meet the demands.

In such a situation, it may well be argued that in order to restore the very possibility of promoting an appropriate system of collective bargaining based on rational dialogue and suited to the needs of a developing country like Bangladesh, it was first necessary to clear the ground and put an end to unfair practices which have nothing to do with true collective bargaining by withdrawing temporarily from the sphere of negotiations between management and workers at the industrial unit level the subject of wages and other fringe benefits which is the most likely to give rise to such practice.

In its General Survey on the Application of the Convention on Freedom of Association and on the Right to Organise and Collective Bargaining made in 1973, the ILO Committee of Experts[58] on the Application of Conventions and Recommendations noted:

> In view of the serious problems that can arise in certain circumstances in the economy of a country, it would be difficult to lay down absolute rules concerning voluntary collective bargaining, and Governments might feel in certain cases that the situation calls at times for stabilisation measures during the application of which it would not be possible for wages rates to be fixed freely by means of collectively

[58] For details about the Committee of Experts, see below, chapter 5.

> negotiations. Such a restriction, however, should be imposed as an exceptional measure and to the extent necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standard.[59]

Thus, it is apparent that if the suspension of the right to collective bargaining in respect of wages and fringe benefits was a temporary measure, then the promulgation of the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974, could not be said to have infringed the ILO requirements or standards as that being justified by the circumstances prevalent at that time.

However, the deliberate omission of the Legislature in prescribing any time limit for the operation of the Ordinance of 1973[60] and subsequently by inserting in the Act of 1974[61] that the provisions of the Act have been made to give effect to the fundamental principles of state policy as set out in Article 10 of the Constitution,[62] made it clear that it was not a temporary measure but a permanent feature based on the assumption that under a system of public ownership of undertakings in the management of which the workers will be

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[59] ILO, Report of the Committee of Experts on Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), Vol. B, Geneva 1973, p. 75.

[60] State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance,1973.

[61] State-Owned Manufacturing Industries (Terms and Conditions of Service) Act,1974.

[62] Ibid, Section 5. For the provisions of Article 10 of the Constitution, see above, note 45.

called to participate, there will not be no need for collective bargaining.[63] It is to be noted that whilst the ILO advocates collective bargaining as a general principle and while the Governments which have ratified Convention No. 98 are under an obligation to promote and encourage collective bargaining, it is left to each country to decide what is the best machinery to be established in order to put this principle into practice. Thus, instead of providing a suitable machinery for collective bargaining, the act of curtailing the right to collective bargaining of the workers of public sector industries, in matters of wage and fringe benefits has undoubtedly resulted in breaching the Government's commitment to be bound by the provisions of the ILO Conventions which it has ratified.[64] The Government's action did not go unchallenged as National Workers Federation (Jatiya Sramik Federation) filed a complaint (Case No. 816)[65] to the ILO Committee on Freedom of Association alleging that the legislation in question had put an end to collective bargaining in public sector industries.[66]

The implementation of the Industrial Workers Wages Commission's recommendation through promulgation of the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974 could not

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[63] See, Labour Policy, 1972.

[64] For the Government's commitment to be bound by the ILO Conventions it has ratified, see, ILO, Record of Proceedings, International Labour Conference, 57th Session, Geneva 1972, p. 301.

[65] See, ILO, Official Bulletin, Series B, Vol. LXX, No. 1, 1976, p. 2 ; Vol. LXI, No. 1, 1978, p. 2; Vol. LXI, No. 2 , 1978, pp. 6-8.

[66] For discussion of the case, see below, chapter 5, pp. 223-226.

satisfy the workers because at the time of implementation, those recommendations could not compensate for the escalation in the rate of inflation.[67] Nothing was done in respect of workers' participation in management. Industrial disputes continued to rise.[68] The industrial unrest coupled with other political factors prompted the Government to declare a state of Emergency throughout the country.

4.5 THE RIGHT UNDER THE STATE OF EMERGENCY AND MARTIAL LAW

On 28 December, 1974, the President under Article 141A of the Constitution proclaimed a state of Emergency[69] throughout the country. By a separate Order,[70] issued on that day he suspended, *inter alia*, the right of any person to move any court for the enforcement of the right to freedom of association as guaranteed under Article 38 of the Constitution. Thus, the suspension of enforcement of right to freedom of association resulted in denying the right, as the workers would not get justice in case of denial of such right by the employer or for that matter by the department of labour. Further, Section 19

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[67] Sobhan, R., and Ahmed, M., Public Enterprise in an Intermediate Regime : A Study in the Political Economy of Bangladesh, Dhaka 1980, pp. 524-28.

[68] Khan, A. A., "Government Policies Towards Labour in Bangladesh: A Historical Analysis", in The Dhaka University Studies, Part-C, Vol. 7, No. 2, 1986, p. 95.

[69] For the text of the Proclamation of Emergency, see, Dhaka Law Reports, Vol. 27, 1975, p. 76.

[70] For text of the Order, see, Dhaka Law Reports, Vol. 27, 1975, p. 78.

of the Emergency Powers Rules, 1975,[71] promulgated under Section 2 of the Emergency Powers Ordinance, 1974,[72] provided:

> If in the opinion of the Government it is necessary or expedient so to do for ensuring the security, the public safety or interest of Bangladesh, or for securing the maintenance of public order or for maintaining supplies or services essential to the life of the community, the Government may, by general or special order, applying generally or to any specified area and to any undertaking or establishment or class of undertaking or establishments make provision:
> (a) for prohibiting, subject to the Order a strike or lock-out ... .

In pursuance of the above Rule, on 6 January, 1975, the Government by an executive Order[73] prohibited strikes and lock-out in all undertakings and establishments in Bangladesh, both private and public sector. A general prohibition of the right to strike of its kind was in contradiction with Article 10 of Convention No. 87 which recognises the right of trade unions to formulate and defend the rights of their members. The same prohibition also violated Article 3 of the same Convention, which gives to the unions the right to organise their activities and to formulate their programmes.

Soon after the proclamation of Emergency, on 25 January, 1975, the Constitution (Fourth Amendment) Act, 1975, was passed.[74] Article 117A of the Constitution provided that the President may by an Order direct that there shall be only one political party in the state. Under these new powers, on 24

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[71] For the text of the Emergency Powers Rules, 1975, see, Ibid, at p. 6.

[72] For the text of the Emergency Powers Ordinance,1974, see, Ibid, at p. 76.

[73] S.R.O. 14-L/75/S-VII/14(17)/74/12 dated 6 January, 1975.

[74] For the text, see, Dhaka Law Reports. Vol. 27, 1975, p. 87.

February, 1975, the President of the Republic issued an Order introducing one-party system in Bangladesh.[75] The single national party formed was to be known as the Bangladesh Krishok Sramik Awami League (hereinafter referred to as BAKSAL) i.e., Bangladesh Peasants' and Workers' National Party.[76] However, BAKSAL was to have five fronts of which one was Jatiyo Sramik League[77] i.e., National Workers' Organisation. Following the formation of the one party system in March 1975, the President of Bangladesh addressed a labour rally in Tejgaon, Dhaka, where he announced that "there will be one labour front in the country as there will be only one political party".[78] Accordingly, the Jatiyo Sramik League which was the existing labour front of the Government became the only labour front of the country under the constitutional framework. Hence, there was no scope for the existence of other labour organisations or unions.

The principle of free choice of trade unions is an essential element of freedom of association. According to the decision of the ILO Committee on Freedom of Association while it may be to the advantage of workers to avoid multiplicity of trade union organisations, and while Governments may, in certain cases, consider that a single trade union movement is more convenient for an adequate representation of workers and their participation in the social and

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[75] See, Bari, E., Martial Law in Bangladesh 1975-79 : A Legal Analysis, Unpublished Ph.D. Thesis, 1985, University of London, p. 32.

[76] Ibid, p. 32.

[77] See, Ahmed, K., Labour Movement in Bangladesh, Dhaka 1978, p. 123.

[78] Ibid, p. 123.

economic field, unification of unions should be the result of a voluntary decision of the workers and should not be imposed or maintained by legislation or other compulsory means.[79] Thus, unification of trade union movement imposed through state intervention by legislative means runs counter to the principle embodied in Article 2 and 11 of Convention No. 87.[80]

The system of one national union lasted for only a few months until the assassination of President Sheikh Mujib by a group of army officers, which led to the proclamation of Martial Law on 15 August, 1975.

On 1 December, 1975, the Martial Law Authority promulgated the Industrial Relations (Regulation) Ordinance, 1975, which was the first piece of legislation after the independence of Bangladesh, dealing directly with workers' right to association. It was not enacted to supplement the existing legislation on workers' right to association i.e., the Industrial Relations Ordinance, 1969, but to over-ride it.[81] Section 4 of the Ordinance clearly discouraged the formation of new workers association as it envisaged "unless the Government otherwise

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[79] ILO, Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva 1985, p. 47.

[80] The ILO Committee of Experts in 1973 commented on Egyptian legislation which aimed at unification of Trade Unions in the following manner:
"Section 162 of the Labour Code, as amended, which prohibits the establishment of more than one general Trade Union of workers in the same occupation or trade, or more than one Trade Union committee in any one town or village, as mentioned in Section 169, would appear to be incompatible with Articles 2 and 11 of the Convention". See, ILO, Report of the Committee of Experts on the Application of Conventions and Recommendation, Report III (Part 4 A), 1973, pp. 113-114.

[81] See, Section 3 of the Industrial Relations (Regulations) Ordinance 1975, in Dhaka Law Reports, Vol 27, 1975, p. 203.

directs there shall not be any registration of new trade unions under the Industrial Relations Ordinance, 1969".[82] Unions registered prior to the promulgation of the Industrial Relations (Regulation) Ordinance, 1975, were allowed to exist but their functioning was restricted as no election for determination of collective bargaining agent under the IRO, 1969[83] was allowed.[84] This provision was in contradiction of Article 3 of Convention No. 87 which reads as follows: "Workers' ... organisation shall have the right to ... elect their representatives in full freedom ...". Again, reading Section 7 of the Industrial Relations (Regulation) Ordinance, 1975, it appears that though after the promulgation of the said Ordinance no election could take place for determination of collective bargaining agent i.e., union representatives, yet in unions where collective bargaining agents already existed nothing debarred them from functioning. However, it was provided that where there was no collective bargaining agent in any establishment the registrar shall constitute a Consultative Committee which shall consist of equal number of workers and employers to be selected by the registrar.[85] Thus, in the name of constitution of

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[82] It may be mentioned that Sections 5 and 6 of the Industrial Relations Ordinance, 1969, deal with the procedure of registration of Trade Unions.

[83] Sections 22 and 22A of the Industrial Relations Ordinance, 1969, deal with election of collective bargaining agent.

[84] See, Section 7 of the Industrial Relations (Regulation) Ordinance, 1975.

[85] See, Section 8 of the Industrial Relations (Regulation) Ordinance, 1975.

the 'Consultative Committee', contrary to Convention No. 87,[86] the Ordinance under discussion substituted the provision for the election of workers' representatives with that of selection by the registrar of Trade Unions.

Further the promulgation of this Ordinance was a serious set-back in the development of workers' right of association as a certain category of workers, i.e., persons employed as members of watch and ward or security staff or confidential assistants whose right of association had been recognised since the enactment of the very first legislation on the subject i.e., the Trade Unions Act, 1926 and till the date of passing this Ordinance, have been denied their right of association.[87]

Before adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948, (No. 87) by the International Labour Conference, which provides full freedom in electing the representatives of workers' organisation, when the Indian Parliament passed the Trade Union Act, 1926, it provided that 50% of the total office bearers of the union could consist of persons, who were not actually employee or engaged in the industry with which the union was connected.[88] All subsequent legislation on the issue,[89]

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[86] See, Freedom of Association and Protection of the Right to Organise Convention, 1948, Article, 3.

[87] See, Section 5 of the Industrial Relations (Regulation) Ordinance, 1975.

[88] See above, chapter 3, p. 83.

[89] See, Trade Union (Amendment) Ordinance,1960, Section 9; Trade Union (Amendment) Ordinance, 1961, Section 3(2); East Pakistan Trade Unions Act, 1965, Section 24; Industrial Relations Ordinance, 1969, Section 7.

despite the fact that full freedom has been provided in Convention No. 87, reduced the limit to 25%. This may be explained to have provided at least limited freedom in electing those people as union executives who were not actually employed or engaged in any establishment. But ironically, ignoring the provisions of the ILO Convention totally and also the fact that trade unions had been enjoying this right since 1926, the Government by promulgation of the Ordinance[90] curtailed the exercise of this right at plant level unions though allowed at federation level unions.[91]

In exercise of the powers conferred by Section 66 of the IRO, 1969, the Government on 26 February, 1977 promulgated Industrial Relations Rules, 1977. Rule 10 outlined the powers and functions of the Registrar introducing external supervision of the international affairs of Trade Unions. This provision empowered the Registrar to enter any Trade Union or federation of Trade Unions and make such inspection of the office or premises and of any register of documents and seize any such record, register or other documents which he would deem necessary for carrying out the purposes of the Ordinance. No objective criteria was provided for such inspection. The failure to indicate any objective criteria for inspection on the part of the Registrar leads us to the

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[90] See, Section 6 of the Industrial Relations (Regulation) Ordinance, 1975, in Dhaka Law Reports, Vol. 27, p. 203.

[91] For reasons of prohibiting the persons not actually employed in the establishment to become trade union official, see below, pp. 162-164.

contention that the provisions are violative of Article 3 of Convention No. 87.[92] If the administrative authority has discretionary power to examine the books and other documents of an association, conduct an investigation and demand information at any given time, there is a grave danger of interference which may be of such nature to restrict the guarantee provided for in Convention No. 87. Although the application of legislative provisions and union rules concerning an organisation's administration must by and large be left to the members of the Trade Union, the principle set out in the Convention do not exclude the external control of the internal acts of an organisation where they are alleged or where there are major reasons for believing them to be against the law (which should not of course infringe the principles of freedom of association) or the Union's Constitution.[93]

Since independence of Bangladesh in the year 1971, the Industrial Relations Ordinance, 1969, which was promulgated during the closing years of Pakistani rule, continued to be the governing legislation of the workers' right to freedom of association and collective bargaining. Although its unfettered operation was restricted and curtailed by other legislation,[94] it was not until the

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[92] For comments of the ILO Committee of Experts on this issue, see below, chapter 5, pp. 212-215

[93] See, ILO, Freedom of Association and Collective Bargaining: General Survey, Geneva 1983, p. 59

[94] See, for example, Bangladesh Nationalised Enterprises and Statutory Corporations (Prohibition of Strikes and Unfair Labour Practice) Order,1972, in Dhaka Law Reports, Vol. 24, 1972, p. 146; State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1973, in Dhaka Law Reports, Vol. 26, 1974, p. 161; Industrial Relations (Regulation) Ordinance, 1975, in Dhaka Law

enactment by the Martial Law regime of the Industrial Relations (Amendment) Ordinance, 1977, that the provisions of the Industrial Relations Ordinance, 1969, were directly altered, imposing further restrictions on the workers' right to freedom of association. One of the crucial restrictions has been the ban on the functioning of unregistered unions. Section 5 of the Industrial Relations (Amendment) Ordinance, 1977, reads as follows: "No trade union which is unregistered or whose registration has been cancelled shall function as a trade union". Such a restriction had never existed nor was subsequently imposed by other legislation since the enactment of the first legislation on the subject i.e. the Trade Unions Act, 1926. The insertion of this new provision, "no trade union to function without registration", in other words, envisages that registration is not only a pre-requisite but mandatory for trade unions to function. Thus, it is apparent that any future establishment of unions would be subject to registration amounting to 'previous authorisation' within the meaning of Article 2 of Convention No. 87 as without such authorisation, i.e., registration, unions would not be able to function. This view is supported by the fact that the activities of unregistered unions were made punishable as Section 61A of the Industrial Relations Ordinance, 1969, as inserted by the Industrial Relations (Amendment) Ordinance, 1977[95] reads as follows:

> Whoever takes part, or incites others to take part in the activities of an

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Reports, Vol. 27, 1975, p. 203.

[95] See, Section 20 of the Industrial Relations (Amendment) Ordinance, 1977, in Dhaka Law Reports, Vol. 29, 1977, p. 214.

> unregistered trade union ... shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred Taka, or with both.

But on the other hand the Committee on Freedom of Association observed: "the principle of freedom of association would remain a dead letter if workers are required to obtain any kind of previous authorisation to enable them to establish an organisation".[96] The requirements of registration as the Committee on Freedom of Association further observed "must not be such as to be equivalent in practice to previous authorisation, or as to constitute such an obstacle to the establishment of an organisation that they would amount in practice to outright prohibition".[97] Furthermore, the Committee on Freedom of Association while recognising that, in certain circumstances, it may be legitimate for registration to confer advantages on a trade union organisation in respect of such matters as to representation for the collective bargaining, consultation by the Governments, or the nomination of delegates to international bodies, it should not normally involve discrimination of such character as to render non-registered organisation subject to special measures of police supervision in such a way as to restrict the exercise of freedom of association.[98]

The Industrial Relations (Amendment) Ordinance, 1977, not only prohibited the function of unregistered unions but also imposed restrictive

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[96] ILO, Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva 1985, p. 56.

[97] Ibid, p. 57.

[98] See, ILO, Committee on Freedom of Association, 74th Report, Case No. 298, Para. 45; 107th Report, Cases Nos. 251 and 414, Para 39.

conditions for the registration of unions. Section 4 provided that a trade union of workers shall not be entitled to registration under this Ordinance unless it has a minimum membership of thirty per cent of the establishment or group of establishments in which it is formed.[99] It is apparent from the above provision that in one establishment no more than three unions could be established. Thus, the freedom of workers to establish a fourth organisation in their establishment being curtailed, they undoubtedly became subject to limited freedom in contradiction to the promise of full freedom to establish organisations of there own choosing as enshrined in Article 2 of the Right to Organise and Collective Bargaining Convention, 1948, (No. 87). Another issue to be analysed here whether the minimum requirement of 30% workers to be entitled to registration as a trade union amounts to previous authorisation. It may be argued that the 30% requirement as such may not amount to `previous authorisation' though by dictating the terms of establishing the unions and thereby depriving the workers of their authority to decide, this provision undoubtedly violated another basic guarantee of the workers right to freedom of association i.e., 'establish and join organisation of their own choosing'. Nevertheless, reading with the prohibitive clause as specified in Section 5, i.e., 'no unions to function without registration', the 30% workers requirement clause amounts to 'previous authorisation' within the meaning of Convention No. 87 as even 29% workers organised together to form an union would not be able to function as they would be denied

[99] For opinion of the ILO Committee of Experts on this issue, see below, chapter 5, pp. 211-212.

registration by the Registrar of Trade Unions and would also be punishable if functions.[100] On this point the Committee on Freedom of Association has observed:

> The formalities prescribed by legislation should not be of such nature as to hamper freedom to form trade unions nor be applied in such a way as to delay or prevent the setting up of occupational organisation.[101]

Whatever criticism may be centred against the Industrial Relations Rules, 1977 and the Industrial Relations (Amendment) Ordinance, 1977 it was only after promulgation of this Ordinance on 18 July, 1977, that the Martial Law Government on 20 July, 1977, by an executive Order issued in pursuance of Section 4 of the Industrial Relations (Regulation) Ordinance, 1975[102] provided that "the Government is pleased to direct that registration of new trade unions is hereby permitted under the provisions of the Industrial Relations Ordinance, 1969".[103] Another executive Order issued on the same day in pursuance of Section 7 of the Industrial Relations (Regulation) Ordinance, 1975,[104] provided

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[100] See, Section 61A of the IRO, 1969 as amended by Section 20 of the Industrial Relations (Amendment) Ordinance, 1977.

[101] See, ILO, Committee on Freedom of Association, 177th Report, Case No. 889, Para 332 and 119th Report, Case No. 891, Para 74.

[102] Section 4 of the Industrial Relations (Regulation) Ordinance, 1975, reads as follows: "Unless the Government otherwise directs there shall not be any registration of new trade union under the said Ordinance". Here the said Ordinance means Industrial Relations Ordinance, 1969.

[103] See, S.R.O. 226-L/77/S-VII/1(47)/76, Bangladesh Gazette, Extraordinary, July 20, 1977.

[104] Section 7 of the Industrial Relations (Regulation) Ordinance, 1975, reads as follows: "Unless the Government otherwise direct, there shall not be any election for determination of the collective bargaining agent under the said Ordinance". Here the

that "the Government is pleased to direct that election for determination of collective bargaining agent is hereby permitted under the provision of the Industrial Relations Ordinance, 1969". Thus after the promulgation of the Industrial Relations (Amendment) Ordinance, 1977, the Martial Law Authority shifted from its earlier stand by issuing the executive Orders and thereby removing the restriction on registration of new trade unions and election of collective bargaining agents which created a dead-lock in the activities of trade union affairs. The right to registration of new trade unions was thus revived but it was subject to limitations as mentioned earlier.

4.6 THE RIGHT IN THE AFTERMATH OF EMERGENCY AND MARTIAL LAW

The Martial Law proclaimed on 15 August, 1975 was withdrawn on 6 April, 1979 and constitutional Government began to function. Within a few months, on 27 November, 1979 the Emergency which was declared on 28 December, 1974 and which continued during the continuance of Martial Law was also withdrawn. With the withdrawal of the Emergency the general ban on strikes which was imposed on 6 January, 1975 by an executive Order[105] issued under Emergency Powers Rules, 1975 ceased to have effect and thereby the workers' right to strike under the Industrial Relations Ordinance, 1969 was

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said Ordinance means Industrial Relations Ordinance, 1969.

[105] See, S.R.O. 14-L/75/S-VII/14(17)/74/12, dated January 6, 1975.

restored.

In March 1980 the second labour policy of Bangladesh was announced by Mr. Reazuddin Ahmed, the then Minister in charge of labour. This policy, unlike the first one declared in September 1972, expressly recognised the right to strike and lock out as an instrument of collective bargaining. While guaranteeing workers the right to strike, the policy specified that the right could be exercised only after securing, through secret ballot, support of the majority of the workers of the collective bargaining agent.[106] The policy emphasised growth of leadership from among the rank of workers and described it to be natural and desirable. The Government further asserted in the policy that there was no dearth of leadership amongst the workers. Accordingly, with a view to fostering their leadership, Government expressed its intention to retain the existing practice of formation of executive committee of trade unions at plant level with representatives from amongst the workers. The non-workers were, however, allowed to be elected as office bearers of trade union federation at industry and national level. As to the formation of trade unions, the policy noted that the Government believed that there was need for the growth of healthy trade unionism and the right to form trade unions. It was however emphasised that the right of association should not be extended to persons employed in security services, such as security staff, watch and ward etc.

From the declaration of the above policy, it is apparent that with regard

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[106] See, Labour Policy, 1980.

to workers right of association, apart from recognising the right to strike, the Government simply reaffirmed the stand taken by the Martial Law authority in 1975 as reflected in the Industrial Relations (Regulation) Ordinance, 1975. Hence, it appears that the Industrial Relations (Regulation) Ordinance, 1975 occupied the position of interim Labour Policy of the country so far as the workers' right of association was concerned.

Following the declaration of the new labour policy on 25 July, 1980, the Government promulgated the Industrial Relations (Amendment) Act, 1980 to give effect to its policy. In order to do so, the Act of 1980 almost in identical terms re-enacted the provisions of the Industrial Relations (Regulation) Ordinance,1975, though apparently repealing the Ordinance.[107] Thus, following Section 6 of the Ordinance, the Act of 1980 envisaged:

> ... a person shall not be entitled ... to be a member or officer of a trade union formed in any establishment or group of establishments if he is not actually employed or engaged in that establishment or group of establishments.[108]

The 'outsider'[109] participation in trade union leadership in the Indian sub-continent is not been a recent phenomenon. Rather, it dates back to the very origin of the trade union movement in the British period and also received statutory recognition.[110] Outsider participation at that time appeared as a matter

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[107] See, Section 17 of the Industrial Relations (Amendment) Act,1980.

[108] See, Section 4, Industrial Relations (Amendment) Act, 1980.

[109] Here the term 'outsider' is being used to mean a person who is actually not employed or engaged in any industry or establishment.

[110] See, the Trade unions Act, 1926, Section 22.

of necessity.[111] This necessity did not cease to be significant during the Pakistani period. There is little evidence to suggest that the conditions under which outsiders' participation became inevitable in British India, changed at all during the Pakistani period. The inevitability of outsiders' role in organising trade union activities has been reinforced by various reasons of which the most important is the workers' or insiders' fear of being victimised by the management for their alleged involvement in trade union activities. For the first time the Labour Policy of 1969 recognised this fear:

> The employers ... have been hostile to the development of trade unions. The fear of loss of employment and other punitive measures have made many workers afraid of joining trade unions ... By and large, leadership has not emerged from within the workers themselves and this has resulted in the creation of a permanent professional leadership.[112]

This fear of victimisation coupled with lack of education and other factors created conditions under which it became difficult to develop trade union leadership from the rank and file of workers.

This fact has also been supported by the ILO Committee of Experts on Labour Management Relations in Pakistan back in 1960 who observed that 'outsiders' were the only people who could bring a union into existence under the prevailing circumstances, taking into account factors such as unemployment, illiteracy, the attitude of employers and lack of trade union leadership".[113] Even

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[111] See above, chapter 3, pp. 83-84.

[112] See, Labour Policy, 1969.

[113] ILO, Report to the Government of Pakistan on the Visit of a Joint Team of Experts on Labour-Management Relations, Sept-Oct. 1959, Geneva 1960, p. 20.

to this day, the necessity for outsiders has not outlived in any way in the leadership of plant level unions, as Dr Mainul Islam[114] observes:

> Outside leadership in union activities is also a necessity in the context of Bangladesh because they are in many cases not better qualified and equipped to deal with management .... any worker can be fired by the employer ... at any time and as soon as he is dismissed, a worker ceases to be a union executive. But the outsider leaders do not suffer from such a handicap and can bargain from a position of strength and security.[115]

The ban on outsiders' participation in the leadership of plant level unions may be viewed as a motivated act of Government in order to have a relatively easy hold over the affairs of the unions and the trade union movement as a whole. It was also aimed at clearing off any effective opposition from among the workers against the political party in power. To quote Islam:

> Real reason behind barring outsiders at the plant level unions, was, however, prompted by narrow political motive of the ruling parties of Bangladesh. ... one important reason behind barring outside leadership from the union was the weakness of the ruling political parties to have their own strong trade union organisation when they came to power. So when they get hold of the political power they want to capture the union power as well, if necessary by force through the help of police and management. But the tested veteran leaders with professional skill and strong record of service stood on their way to forcible occupation of the union leadership. So there arose the need for enacting a law banning the outsiders to become union executives.[116]

It is beyond doubt that the Industrial Relations (Amendment) Act, 1980, by disqualifying persons not actually employed or engaged in the establishment

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[114] Dr. Mainul Islam is a Professor of the Department of Management, University of Chittagong, Bangladesh.

[115] Islam, M., "Industrial Relations in Bangladesh", in Indian Journal of Industrial Relations, Vol. 19, 1982, p. 180.

[116] Id.

concerned where the union is formed to become an officer or a member of trade union, clearly violated Article 3 of Convention No. 87 which guarantees workers the right to elect their representatives in full freedom. Further, according to the ILO Committee on Freedom of Association:

> If the national legislation provides that all trade union leaders must belong to the occupation in which the organisation functions there is a danger that the guarantees provided for Convention No. 87 may be jeopardised.[117]

The Committee also observed:

> The right of workers' organisations to elect their representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interest of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining conditions of eligibility of leaders or in the conduct of the elections themselves.[118]

The Industrial Relations Ordinance, 1969, recognised the right to strike as a means of collective bargaining subject to 21 days notice.[119] The Industrial Relations (Amendment) Act, 1980 imposed further restrictions by adding a proviso according to which no collective bargaining agents were to serve any notice of strike unless three-fourths of its members had given their consent to it through a secret ballot specifically held for the purpose.[120] Thus, the problem

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[117] ILO, Freedom of Association: Digest of Decisions and Principles of the Committee of the Governing Body of the ILO, Geneva 1985, pp. 62-63.

[118] Ibid, p. 62.

[119] See, Industrial Relations Ordinance, 1969, Section 28.

[120] Industrial Relations (Amendment) Act, 1980, Section 8.

posed by the new Act was the requirement to hold election through secret ballot by the collective bargaining agents before deciding about a strike action. According to Section 7(2) of the IRO, 1969 as amended by Section 4 of the Industrial Relations (Amendment) Ordinance, 1977, if a union can claim 30% membership in a place of work it can get registration. Thus if there exists more than one union in a single work place, collective bargaining agent is to be elected by the workers and a union needs 34% of the total votes for the purpose.

On 30 May, 1981, President Ziaur Rahman was assassinated and the Vice-President Justice Abdus Sattar assumed the charge as acting President under Article 55(1) of the Constitution of Bangladesh, and in view of the grave situation existing at that time, the acting President issued a Proclamation of Emergency throughout the country under Article 141A of the Constitution and thereby the people of the country were subject to a second declaration of Emergency after achieving independence in 1971.[121] By a separate Order issued on the same date, the President, *inter alia*, suspended the enforcement of the right to freedom of association conferred under Article 38 of the Constitution. Unlike the first emergency period,[122] the suspension of constitutional guarantee of the right to freedom of association did not last long as the Proclamation of

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[121] For the text of the Proclamation of Emergency, see, Dhaka Law Reports, Vol. 33, 1981, pp. 119-20.

[122] The first Emergency in the country was declared on 28 December, 1974, and was withdrawn on 27 November, 1979.

Emergency was revoked by a subsequent proclamation issued by the acting President on 21 September, 1981.

4.7 THE SECOND MARTIAL LAW PERIOD AND THE WORKERS' STRUGGLE

The constitutional guarantee of the right to freedom of association did not continue for long, because on 24 March, 1982, in a bloodless *coup d'etat,* the elected Government of President Sattar was overthrown and the armed forces took over power. The whole country was placed under Martial Law proclaimed by the Chief of Army Staff, Lieutenant-General Hussain Muhammad Ershad who assumed full power as the Chief Martial Law Administrator and suspended the Constitution. Thereby the nation witnessed the second Martial Law regime after achieving independence.[123]

The second Martial Law regime, following the first Martial Law regime,[124] on 27 August, 1982, promulgated the Industrial Relations (Regulation) Ordinance, 1982. Like the first Martial Law Regime, the emergence of the second military regime of Mr. Ershad also caused a set-back to the workers' right of association. By promulgating the Industrial Relations (Regulation) Ordinance, 1982, the regime imposed restrictions on meetings of trade union.

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[123] For the text of the Proclamation of Martial Law, see, Bangladesh Gazette, Extraordinary, dated March, 24, 1982.

[124] The first Martial Law was declared on 15 August, 1975 and was withdrawn on 6 April, 1979.

Section 7 of the Ordinance reads as follows:

> No meetings of any trade union including a meeting for election of executive committee, shall be held without the prior permission of the Government or of such authority as the Government may by notification in the official Gazette, specify.

It was also provided that whoever convenes any meeting in contravention of the above provision shall be punishable with imprisonment for a term which may extend up to two years, or with fine which may extend up to five thousand taka, or with both.[125] But on the other hand the Committee on Freedom of Association observed:

> The right of trade unions to hold meetings freely in their own premises for discussion of trade union matters, without the need for previous authorisation and without interference by the public authorities, is a fundamental aspect of freedom of association.[126]

Thus, the imposition of restrictions on meetings of trade unions was against the principle of freedom of association. Without the unfettered right to hold meetings, trade unions can hardly function as for the purpose of formulating their activities and programmes the union executives need to get together whenever there is a necessity. Accordingly, freedom from Government interference in holding of trade union meetings constitutes an essential aspect of trade union rights, and the public authorities should refrain from any interference which would restrict or impede the lawful exercise of these rights thereof, on condition that the exercise of these rights does not disturb public

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[125] See, Industrial Relations (Regulation) Ordinance, 1982, Section 8(2).

[126] ILO, Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva 1985, p. 33.

order or cause a serious and imminent threat thereto.[127]

Through the promulgation of the Ordinance,[128] the second Martial Law authority, like the first Martial Law authority, prohibited elections for determining collective bargaining agents.[129] Industrial disputes were to be settled by negotiation and conciliation.[130] Strikes were declared illegal.[131] Thus, the whole concept of collective bargaining became a hollow pronouncement. The workers having lost their right of collective bargaining and lawful trade union activities at the plant level, had been looking for an alternative to collective bargaining in order to articulate their demands at the enterprise concerned and at national level. An alliance of eleven national federations of trade unions[132] emerged by the end of 1982. On November, 1982 they submitted '5-point' demands to the Chief Martial Law Administrator which, *inter alia,* included restoration of unfettered rights of trade unionism to workers. The leaders of this trade union alliance started holding indoor meetings and exchanged ideas in

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[127] See, ILO, Committee on Freedom of Association, 58th Report, Case No. 253, Para 639; Case No. 261, Para 175; 70th Report, Case No. 288, Para 79.

[128] Industrial Relations (Regulation) Ordinance, 1982.

[129] Ibid, Section 4(2)- 4(4).

[130] Ibid, Sections 5 and 6.

[131] Ibid, Section 8.

[132] The eleven national federation of trade unions included: (1) Jatiyo Sramik Federation, (2) Jatio Sramik Jote, (3) Jatio Sramik League, (4) Ganatantrik Sramik Andolon, (5) Bangla Sramik Federation, (6) Bangladesh Workers Federation, (7) Sanjucta Sramic Federation, (8) Bangladesh Federation of Labour, (9) Bangladesh Sramik Federation, (10) Samajtantric Sramik Federation, and (11) Trade Union Kendra. See, The Ittefaq, Dhaka , 18 October, 1982.

order to evolve a plan for a shake-up. But it was not until the May Day of 1983 that they could succeed in organising rallies, meetings and processions of workers as their first move towards establishing contact among workers and also as a demonstration of working class unity. Some eminent trade union leaders of the country addressed the rally and called to observe demand-day on 3 June, 1983. The rally also resolved, among others, to launch a movement to realise the '5-point' charter of demands as submitted to the Chief Martial Law Administrator.[133]

This set the tone of massive awakening among the urban industrial workers' of the country. The leaders of the eleven federations also started contacting the major unions at the plant level and mobilised workers mass support for an all-out movement against the regime. The trade union alliance was further strengthened by the joining of Bangladesh Jatiotabadi Sramic Dal, on 29 March, 1984, and on that very day the formation of the Sramik Karmachari Oikya Parisad (hereinafter referred to as SKOP) of twelve national trade union federations was officially announced.[134] The leaders of the SKOP urged the Government to concede to their '5-point' demands by 12 April, 1984, failing which they emphasised, the Government would have to face the consequences of a 'direct-action' programme to be announced at the national

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[133] Khan, A. A., "Strikes and Military Rule in Bangladesh", in Chittagong University Studies (Commerce), Vol. 5, 1989, p. 37.

[134] See, The Bangladesh Observer, Dhaka, 1984, March 30.

convention of the SKOP on the day following the dateline (i.e., 13 April, 1984).[135] This threat of the SKOP seemed to have softened the Government's position. It agreed to meet the SKOP leaders on 12 April. The meeting ended in failure and consequently a 24-hour strike call was given for 28 April by SKOP at its convention held on April 13, 1984 which was decided to be observed in all the mills, factories and offices of the country.[136]

Meanwhile, the opposition political parties and Student Action Committee expressed solidarity with the strike of SKOP for 28 April, 1984.[137] According to Dr Abdul Awal Khan, as a result of successful completion of the strike of April 28, 1984, the working class of the country emerged and was acknowledged as the most powerful united force in the land one had ever seen within the constraints of Martial Law in the country.[138] Immediately after the strike and before the rally of May-Day, 1984 two other national trade union federations[139] officially joined forces with the SKOP, further strengthening the inner bonds of the working class. On May-Day of 1984, the huge rally of workers threatened and urged the Government to either concede to the '5-point' demands of SKOP by 21 May, 1984 or prepare for an all-out nation-wide strike

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[135] See, Khan, A. A., above note 133, at p. 38.

[136] Id.

[137] The Holiday, Dhaka, 27 April, 1984.

[138] Khan, A. A., above note 133, at p. 39.

[139] The two national federations were: (a) Samajtantrik Sramik Front and (b) Jatiya Sarmik League (Hasina group of Awami League).

of 48 hours on 22 and 23 May, 1984.[140]

In fact the success of the strike of 28 April, 1984, not only weakened the bargaining position of the Government but it also shook the strength and confidence of employers. They were left in a helpless position in the face of the 48 hour long strike that became immanent. Thus although the President asserted on 19 May, 1984 that the attempts of the SKOP would be resisted at all cost, his Government had to soften up and abandon its position in order to save itself within a day of making this assertion.[141] The Government was thus brought to sign an agreement with SKOP on 21 May 1984 through which some vital trade union rights were revived. Thus following the agreement, on 22 May 1984, the Industrial Relations (Regulation) Ordinance, 1982, was repealed.[142] As a result, trade unions were no longer required to obtain permission from the Martial Law Authority before holding trade union meetings and election of union executive could take place in accordance with the provisions of the Industrial Relations Ordinance, 1969.

Further, having repealed the Industrial Relations (Regulation) Ordinance, 1982, the Martial Law Government on 13 March, 1985, promulgated the Industrial Relations (Amendment) Ordinance,1985. Under this amendment, in some relaxation of the previous restriction on outsiders becoming trade union

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[140] For details see, The Holiday, Dhaka, 3 May, 1984.

[141] For details see, The Sangbad, Dhaka, 20 May, 1984.

[142] See, the Industrial Relations (Regulation) (Repeal) Ordinance, 1984.

members or officials,[143] an ex-worker of the establishment became entitled to be a member or officer of a trade union in that establishment.[144] It may be recalled that this was not any new concession given to the workers who already had been enjoying this right since 1926 when the Trade Union Act, 1926 was enacted.[145] The restriction of its kind was first imposed by the Industrial Relations (Regulation) Ordinance, 1975 and subsequently by the Industrial Relations (Amendment) Ordinance, 1980.

In order to ensure that trade union activities are not hampered because of transfer of union executives from one place to another the Industrial Relations (Amendment) Ordinance, 1985 further provided that no officer of any trade union shall be transferred from one place to another without his consent.[146] The Ordinance also safeguarded prospective union executives by laying down that no employer shall while an application under Section 5 of the Industrial Relations Ordinance, 1969 for registration of a trade union is pending alter, without prior permission of the Registrar, to the disadvantage of any workman who is an officer of such trade union, the conditions of service applicable to him before the receipt of the application by the Registrar.[147] It is apparent that the above provisions did not evolve either as a good will gesture of the

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[143] See, Section 4 of the Industrial Relations (Amendment) Ordinance, 1980.

[144] See, Section 2, Industrial Relations (Amendment) Ordinance, 1985.

[145] See above, chapter 3, p. 8.

[146] See, Section 5 of the Industrial Relations (Amendment) Ordinance, 1985.

[147] Ibid, Section 5.

Government in promoting trade unions activities or due to the Government's respect for the ILO Conventions but as the outcome of the SKOP movement.

4.8 THE RIGHT IN THE AFTERMATH OF SECOND MARTIAL LAW

On 10 November, 1986, Martial Law was withdrawn restoring the Constitution of the People's Republic of Bangladesh.[148] Thus, the constitutional guarantee of the right to freedom of association which was suspended on 24 March,1982 again came into operation. However, it was not until 1 February, 1990, that any further law was promulgated amending the IRO, 1969 relating to workers' right of association. The Industrial Relations (Amendment) Act, 1990 restricted the scope of the Industrial Relations (Amendment) Ordinance, 1985, as it envisaged that a person who has been dismissed from the service would not be entitled to be a member or officer of a trade union of that establishment[149] Further by Section 2 thereof two provisions were added to sub-Section (2) of Section 7 of the IRO, 1969 so that the entire subSection (2) of Section 7 now read as follows:

> A Trade Union of workers shall not be entitled to registration under this Ordinance unless it has a minimum membership of thirty percent of the total number of workers employed in the establishment in which it is formed.
>
> Provided that more than one establishment under the same employer, which are allied to and connected with one another for the purpose of carrying on the same industry irrespective of their place of situation, shall be deemed to be one establishment for the purpose of

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[148] See, The Constitution (Final Revival) Order, 1986, Chief Martial Law Administrator's Order No. VIII of 1986.

[149] See, Section 3 of the Industrial Relations (Amendment) Act, 1990.

this sub-section.

Provided further that where any doubt or dispute arises as to whether any two or more establishments are under the same employer or whether they are allied to or connected with one another for the purpose of carrying on the industry, the decision of the Registrar shall be final.

If an employer had more than one establishment under the unamended IRO, 1969, the workers, without any distinction whatsoever, had the right to form trade unions in each establishment. The proviso added by the Amendment Act has introduced a scheme of 'one employer, one establishment'. Thus the new Trade Unions have to be organised 'establishment-wise'.[150] If a trade union, thus constituted 'establishment-wise', seeks registration, then it will be entitled to registration, only if it has a minimum membership of thirty percent of the total number of workers employed in that establishment or group of establishments in which it is formed. Thus, irrespective of number of establishments under one employer there can not be at a given time, more than three registered Trade Unions.

The vires of the two provisos to sub-section (2) of Section 7 was challenged before the Supreme Court of Bangladesh in the case of *Aircraft Engineers v Registrar, Trade Unions*[151] on the ground that the amended legislation is violative of the fundamental right guaranteed by Article 38 of the Constitution.

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[150] Under Section 2(iv) of the IRO, 1969 "establishment means any office, firm, industrial unit, undertaking, shop or premises in which workmen are employed for the purpose of carrying on any industry". Under Section 2(xiv) "industry means any business, trade, manufacture, calling, service, employment or occupation".

[151] See, Dhaka Law Reports (AD), Vol. 45, 1993, p. 122.

In this case after the promulgation of the Industrial Relations (Amendment) Act 1990 the existing seven registered Trade Unions of Bangladesh Biman Corporation[152] were served with an order of the Registrar dated 2.5.90[153] stating therein that in pursuance of an enquiry made under Section 2 of the 1990 Act it had been found that none of the seven existing Trade Unions were constituted in accordance with the newly introduced provisos to subSection (2) of Section 7 of the IRO, 1969. The Registrar then caused a Notification to be published in the Bangladesh Gazette on 17 May 1990 listing therein the names of the existing seven registered Trade Unions of Bangladesh Biman Corporation, whose registrations were liable to be cancelled.

The appellants submitted *inter alia* that the impugned legislation has brought the inevitable effect of bringing to an end and extinguishing the appellant-unions, particularly in view of Section 11A of IRO, 1969 which provides that "no trade union which is unregistered and whose registration has been cancelled shall function as a trade union".[154]

It was argued by the appellants that the right to form an association as union, guaranteed by Article 38 of the of the Constitution included the right to its continuance which was now being denied by the impugned legislation. The

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[152] Prior to the enactment of Industrial Relations (Amendment) Act, 1990 the Registrar of Trade Unions had registered seven unions on the basis of more establishments than one under the same employer.

[153] See, Memo No. RTU/CBA(3)78C-40 dated 2.5.1990.

[154] For more discussion on the issue, see above, p. 156-157.

threatened cancellation of registration was tantamount to negating the effective existence of the fundamental right and as such it was violative of the constitutional guarantee which can not be extinguished by law and on which reasonable restrictions may be imposed only in the interest of public order or morality. But the Court rejected the above contention in the following terms:

> This new legislation contains no restriction upon the workers' right to form a trade union and consequently there is no necessity to show that there is a nexus between the new legislation and public order or morality.[155]

The Court based its argument on the following basis:

> The workers of more than one establishment under the same employer are free to form trade unions, as before. No doubt the existing trade unions lose their registrations in the process and are unable to continue in their old form, but ... the organisational structure of trade unions is a legitimate domain of legislative exercise and no worker has a fundamental right to a particular form of organisational set-up.[156]

In order to emphasise the above contention the Court further elaborated:

> To hold other wise will tantamount to holding that once trade unions are formed along particular pattern and registration given, there can be no further changes in the organisational set-up and that the trade union structure will remain frozen as long as fundamental rights exist, howsoever desirable or necessary it may be for a change to meet the changing needs of times or situations.[157]

The argument of 'changing needs of times and situations' raises few questions: was the promulgation of the impugned legislation a necessity to meet the changing needs of times or situations? If so, why was it necessary and whose

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[155] See above, note 151, at p. 128

[156] Id.

[157] Id.

purpose it intended to serve? Surprisingly, the Court did not deal with these issues. However, in the course of proceeding the respondent did not submit in any manner that the legislation was a necessity to suit the changing needs nor was it established that it was beneficial to workers. In the absence of any such indication, it can be argued that the legislation may have intended to benefit the employers and not workers as it was detrimental to workers' interest resulting the extinction of unions. A clear example is the present case where under the unamended provisions, seven trade unions were registered and five of them were acting as collective bargaining agents but in view of the amended provisos they could no longer function. Thus, it is apparent that the new legislative framework aimed at nothing but curtailing the exercise of the right which workers were already enjoying. Therefore, the argument of his lordship is hardly convincing that:

> The whole purpose of the legislative exercise is not to restrict the right to form associations or unions, but to give the trade unions a shape and to chart out a well-ordered territory for their operation.[158]

Further, in a situation where due to the amendment of law, the existing unions were to defunct, we can not agree to the interpretation of his lordship that:

> The amended legislation has nothing to do with restrictions on the right of association or union or restrictions on its continence. It is a re-organisational statute and no one has a fundamental right to a particular form of trade union.[159]

The question involved in this case was not one of a particular form of trade

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[158] See above, note 151, at p. 126.

[159] Ibid, p. 129.

union but the very existence of the unions and therefore the denial of the right by the Court is a serious set-back in the exercise of right of association.

The present Government which took office on 20 March, 1991 has not brought any change in the existing law on the right to freedom of association. However, on 29 June 1992 the Government by an executive order formed a National Labour Laws Reforms Commission consisting of 35 members.[160] The Commission has submitted its report in March 1994, tabling a Bill named the Labour Code 1994 for legislative enactment. It appears from the report, that the Commission basically performed the task of unifying all the labour laws of the country. The laws relating to trade unions and industrial relations i.e., the provisions of the IRO, 1969 have found placed in chapter XIII of the Code. But in the proposed new Code the various restrictive and prohibitive provisions of the IRO, 1969 which we have highlighted in our discussion have been incorporated in identical terms. Thus, the comments of the ILO Committee of Experts on the various restrictive provisions of the IRO, 1969 vis-a-vis ILO Conventions which we will discuss in the next chapter received no consideration by the Commission as no step has been taken to comply with the Committee's opinion.

Thus, it is apparent from the above discussion that the various Governments succeeding one after another in the post independence period and the various legislative measures adopted by them have been directed mainly

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[160] Among these members, 12 were Government representatives, 8 employers', 8 workers' and 7 legal experts.

towards curbing the right of association. Instead of widening the horizon of exercise of the right to freedom of association in conformity with the ILO Conventions, all successive Governments adopted repressive measures in contradiction to their professed faith in the right to freedom of association and solemn declaration to abide by the ILO Conventions which the state has ratified. Hence, it may be concluded that the legislative framework on the right to freedom of association which is prevalent in post independence Bangladesh have fallen much short of what existed immediately before independence.

CHAPTER 5

THE RIGHT TO FREEDOM OF ASSOCIATION IN BANGLADESH: AN EVALUATION OF THE ILO SUPERVISION

The ILO system for the supervision of Conventions and consideration of complaints is often cited as a model for other systems for ensuring protection of human rights. But it is not easy to assess the effectiveness of such a system. The relationship of cause and effect in this area is difficult to measure and not always apparent. However, the ILO itself has undertaken studies of the impact of ILO supervision in global perspective[1] and others have carried out similar examinations.[2] While these studies may be lacking in precise conclusions, they have nevertheless led to the general view that ILO supervision of implementation of the Conventions in general has been relatively successful. We will however, in this chapter, assess how this supervision has been effective in the context of Bangladesh in relation to the Conventions on freedom of association. Thus, the present study undertakes the task of determining the extent to which the permanent system of supervision such as the ILO's has been able to oblige the Government to discharge its international obligations and

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[1] ILO, The Impact of International Labour Conventions and Recommendations, Geneva 1976.

[2] See, Haas, E. B., Human Rights and International Action: The Case of Freedom of Association, Stanford 1970; Landy, E. A., The Effectiveness of International Supervision: Thirty Years of ILO Experience, London 1966.

promote compliance with international legislation.

5.1 AN OVERVIEW OF THE ILO SUPERVISORY MACHINERY

From the outset, the Constitution of the ILO contained a series of requirements to ensure that international labour standards are given due consideration by the member countries. This explains why, of the forty Articles contained in the Constitution of the Organisation, more than a quarter of them concern the establishment of the machinery for the enforcement of these standards.[3] The supervisory system of the ILO is based primarily on provisions of the ILO Constitution, but these have served as the starting point for progressive development. The initial aim of supervision was to ensure the discharge by states of obligations arising out of the ratification of Conventions, but this was subsequently extended to promoting the implementation of the ILO standards even where no formal obligations existed. The search for effectiveness led to the introduction of a variety of procedures beyond the constitutional provisions of supervision.[4]

The methods and procedures that exist in the ILO for supervising its standards may be grouped under two headings.[5] The first, that of permanent

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[3] See, Articles 19 to 35 of the ILO Constitution.

[4] Valticos, N., International Labour Law, Deventer 1979, p. 258.

[5] For a detailed account of the supervisory machinery of the ILO, see, Tikriti, A., Tripartism and the International Labour Organisation, Stockholm 1982, pp. 274-333; Valticos, N., above note 4 at pp. 225-61; Samson, K. T., "The Changing Pattern of ILO Supervision", in International Labour Review, Vol. 118, 1979, pp. 569-87.

supervision, acts as a catalyst to obtain the widest possible application of the instruments concerned, and seeks to detect or prevent any derogation from Conventions that have been ratified. Under this heading falls the submission by Governments of reports on the implementation of Conventions and Recommendations; the examination of these reports by a Committee of Independent Experts; and the discussion of problems of application and compliance with the constitutional provisions relating to Conventions and Recommendations by a tripartite Committee of the International Labour Conference. In addition to the reporting procedures, there exists another form of supervision based on contentious proceedings i.e., the presentation of representations and complaints under the ILO Constitution. The general procedures stated as above apply to the Conventions on freedom of association as they do to others, but in view of importance of the freedom of association, the ILO has established additional machinery for its protection. This involves the examination of complaints by the Governing Body's Committee on Freedom of Association and by the Fact-Finding and Conciliation Commission on Freedom of Association. A brief account of the methods and procedures described above is given below.

5.1.1 SUBMISSION OF PERIODIC REPORTS BY GOVERNMENTS

It may be recalled that Article 22 of the Constitution of the ILO places each member of the organisation under an obligation to submit to the

International Labour Office an annual report on the measures it has taken to give effect to the Conventions which it has ratified.[6] However, non-ratification of a Convention is not a licence for a member to ignore or disregard a Convention. According to Article 19(5)(e) of the Constitution, the Government should report to the Director-General of the ILO, at such appropriate intervals as are requested by the Governing Body, the position of law and practice in regard to the matters dealt with in the Convention, and the effect which it has given, or is proposed to be given, to the instrument.[7]

By communicating regularly on the manner in which they comply with the terms of a ratified Convention, the Governments make it possible for the ILO to seek some kind of information which is an essential though not a sufficient precondition of any realistic attempt at supervision.[8] The submission of reports by Governments does not in itself enough to constitute a system of supervision. It is only when the reports are subjected to detailed and impartial scrutiny that it is possible to talk of supervision.[9]

5.1.2 EXAMINATION OF PERIODIC REPORTS FROM GOVERNMENTS

A few years after the establishment of the ILO, certain delegates to the

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[6] See above, chapter 2, pp. 63-66.

[7] Ibid, pp. 67-68.

[8] See, Landy, E. A., above note 2, at p. 15.

[9] Valticos, N., "Fifty Years of Standard-Setting Activities by the International Labour Organisation" in International Labour Review, Vol. 100, 1969, p. 228.

ILC expressed their concern that the reports submitted by the member states did not receive sufficient consideration from the Conference and suggested that a Committee should be set up to examine them.[10] As a result, the Conference adopted, at its 8th Session in 1926, a resolution which authorised the Governing Body to appoint a Committee of Experts to make preliminary report of the annual reports submitted by the Governments. The resolution also provided that every future session of the ILC should set up a special Committee to consider annual reports.[11] Accordingly, to ensure that reports on the Conventions were properly examined, the organisation had set up two special bodies, the Committee of Experts[12] and the Conference Committee.[13]

The primary function of the Committee of Experts is to examine the information and reports submitted by members in order to establish the extent to which each state has complied with its obligations under the Conventions and the provisions of the Constitution.[14] In discharging this task, the Committee is

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[10] See, ILO, Record of Proceedings, ILC, 7th Session, Geneva 1925, pp. 156-157.

[11] See, ILO, Record of Proceedings, ILC, 8th Session, Geneva 1926, pp. 238-244.

[12] The Committee of Experts is made up of 20 independent persons (originally 8) nominated by the Director General and appointed by the Governing Body of the ILO. It meets once a year, sits in private and conducts entirely written proceedings. It submits a report to the Conference, usually unanimous except for occasional dissenting opinions.

[13] This Committee is a tripartite body appointed by the Conference each year. Its meetings are public. Its proceedings are conducted orally, and it may hear and examine witnesses. The Committee's terms of reference are laid down in Article 7 of the Standing Order of the International Labour Conference.

[14] On the functions of the Committee of Experts, see, Tikriti, A., Tripartism and the International Labour Organisation, Stockholm 1982, pp. 288-291.

guided by the fundamental principles of supervision i.e., independence, impartiality and objectivity. The comments of the Committee of Experts on ratified Conventions may take the form of observations which are incorporated into a printed report which is communicated to the members of the ILO or 'direct request' addressed to the Government and not incorporated in the printed report. However, the impact of the comments of the Committee depends on the kind of response it is able to evoke from the Governments.

As has been stated above, the second supervisory body, set up by the Conference at the beginning of each regular session is a Conference Committee. This Committee takes as the basis of its work the report of the Committee of Experts, selecting the cases dealt with in the report which it regards as the most important. It invites the Governments concerned to furnish explanations in respect of the discrepancies noted and the measures taken as contemplated by them to remove such discrepancies. The replies, written or oral of Governments, sometimes give rise to a detailed discussion. The discussions and conclusions of the Committee are summarised in a report which is transmitted to the Conference and is then discussed in the plenary sitting.

5.1.3 CONTENTIOUS PROCEDURES

In addition to the system of examination of reports, the Constitution of the ILO provides for another set of procedures which authorise action against members that fail to discharge their obligations under the Conventions which

they have ratified. Thus, there are two types of contentious procedures available under the ILO Constitution, i.e., representations and complaints.

In accordance with the provisions of Article 24 of the ILO Constitution, an industrial association of employers or of workers may submit a representation to the ILO that any of the members has failed to secure in any respect the effective observation within its jurisdiction, of any Convention to which it is a party. A fundamental feature of this procedure is that it gives the right of employers' and workers' organisations to initiate procedures designed to examine the implementation by members of the ILO Convention which they have ratified.

The Complaint procedure provided for in Articles 26-34 of the Constitution of the ILO is the most formal type of supervisory procedure in the ILO. A complaint may be filed by any member state if it is not satisfied that any other member is securing the effective observance of any Convention which both have ratified. It is not required that the state filing the complaint, or any of its nationals should have suffered any direct prejudice. It may be pointed out that no complaint or representation has yet been filed against the Government of Bangladesh.

5.1.4 SPECIAL FREEDOM OF ASSOCIATION PROCEDURES

The general procedures described above apply to the Conventions on freedom of association as they do to all other, but in view of the importance of

freedom of association, the ILO has established additional machinery for its protection. The special machinery in the field of freedom of association for trade union purposes was set up by the ILO in 1950 following an agreement with the Economic and Social Council of the United Nations.[15] It is based on the submission of complaints by Governments or by employers' or workers' organisations, the latter case being the most frequent. Complaints under this procedure may be made even against states which have not ratified the Conventions on freedom of association. For non-ratifying states, the machinery is based on their membership on the ILO and on the fact that the ILO Constitution has affirmed the principles of freedom of association so that the organisation can promote the realisation of this principle. The machinery set up in this field comprises two different bodies, i.e., the Fact-Finding and Conciliation Commission established in 1950 by the agreement with the UN and the Committee on Freedom of Association established by the Governing Body of the ILO at its 117th Session in November 1951.[16] The two organs were originally intended to play a distinct and separate part in the examination of complaints. The Committee was to be a body responsible for making a preliminary examination of the complaints and recommend to the Governing Body of the ILO whether some of them merited being referred to the

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[15] See, Resolution 277(X) of 17th February, 1950 of the Economic and Social Council of the United Nations.

[16] See, Wolf, F., "ILO Experience in the Implementation of Human Rights", in The Journal of International Law and Economics, Vol. 10, 1975, pp. 620-23.

Commission. In principle, no complaint may be referred to the Commission without the consent of the Government concerned. Thus, when it was subsequently found that for want of 'consent' there were difficulties in the way of referring the complaints to the Commission, the Committee on Freedom of Association itself proceeded to examine the substance of the complaints. Eventually, it took precedence over the Commission without its authority being in any way challenged, as for a number of years, the necessity of obtaining the consent of the Government concerned before a case could be investigated crippled the activities of the Commission.[17] Now that its competence to deal with cases directly has by general consent became gradually recognised, the Committee of Freedom of Association has emerged as the linchpin of the entire procedure.[18] Since 1951, the Committee has dealt with about 1800 cases. The cases concerning Bangladesh will be discussed later in this chapter.[19]

Thus at different stages of its development the ILO has evolved a number of different procedures for dealing with different aspects of the promotion and protection of freedom of association which may be regarded as complementary in character.

The following sub-sections will highlight how the machinery described

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[17] The Commission dealt with its first case in 1964 when Japanese Government consented.

[18] Ghevali, V., The International Labour Organisation: A Case Study of the Evolution of the UN Specialised Agencies, Dordrecht 1989, p. 238.

[19] See below, pp. 220-236.

above has been effective in terms of Government's interaction with it and also in terms of securing actual promotion and protection of the right to freedom of association as provided by the ILO Conventions.

5.2 THE STATE OF COMPLIANCE WITH REPORTING OBLIGATIONS BY THE GOVERNMENT

However important may be the adoption of international standards and ratification of Conventions, these are only the first steps in an international standard-setting activity. The rights proclaimed, and in many cases legally accepted, might remain without effect if there were no machinery to follow up their application. As described above, the basis of the system of examination and follow-up is Article 22 of the ILO Constitution which requires a ratifying state to report regularly to the International Labour Office 'on the measures which it has taken to give effect to the provisions of Conventions to which it is a party'. The working and success of the whole procedure depends on satisfactory compliance with this basic requirement. Supervision is impossible unless reports are in fact received and it is necessary therefore to consider whether the Governments comply in fact with its reporting obligation. This is of significance to the present study because the receipt of reports is the essential precondition of and starting point for any attempt at supervision.[20]

We will begin our discussion with Convention No. 11. The Government

[20] See, Landy, E. A., above note 2, at p. 27.

of India having ratified this Convention on 11 May 1923 had sent its first report in 1924 and this the Government followed by submission of subsequent reports every year until the creation of Pakistan in 1947.[21] Following its membership in the organisation on 31 October 1947 and the Convention having been ratified, the Government of Pakistan duly submitted its report for the year 1948 and continued to do so annually until 1958. In 1959, on the proposal of the Committee of Experts, supported by the Conference Committee, the Governing Body of the ILO decided that reports would in future be sent in every two years. However, the annual periodicity continued for first reports on newly ratified Convention and in any case where the supervisory bodies noted material discrepancies between national law and practice and the requirements of a particular Convention; and decided that reports be sent accordingly.[22] However, from 1960 until the independence of Bangladesh, the Government of Pakistan without any failure sent its reports on Convention No.11 on two yearly basis, the last one being in 1970.

The Government of Pakistan, having ratified Convention No. 87 on 14 February 1951, communicated its first report for the period 1 July 1952 to 30 June 1953 on 6 January 1954.[23] Similarly, Convention No. 98 having been

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[21] See, ILO Official Records, File No. ACD 8-2-33-11.

[22] See, Minutes of the 142nd Session of the Governing Body, (May-June 1959), pp. 35-36 and 92-93.

[23] See, ILO, Official Records, File No. ACD 8-2-170-87.

ratified on 26 May 1952, the Government sent its first report in January 1955.[24] Since then the Government duly sent annual report for both the Conventions until 1959 and after that, following the change in reporting procedure,[25] reports on Convention No. 98 were sent on two yearly basis. But so far Convention No. 87 was concerned, being requested by the Committee of Experts, the Government continued to send annual reports up to 1966 which was then followed by normal two yearly reports.[26]

Following the independence of Bangladesh in 1971 and its membership in the ILO on 22 June 1972[27] and the Conventions Nos. 11, 87 and 98 having ratified, the Government sent its first reports for all these Conventions in 1974.[28] Since then the Government has always duly sent its reports due under the Conventions.

So far as the unratified Conventions on freedom of association are concerned, under Article 19 of the Constitution, the ILO in 1980 requested the Government of Bangladesh to send report on the position of national law and practice in regard to the Rural Workers' Organisations Convention, 1975 (No. 141). The Government duly sent its report which was received by the ILO

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[24] See, ILO Official Records, File No. ACD 8-2-170-98.

[25] See above, note 22.

[26] See above, note 23.

[27] See above, chapter 2, p. 34.

[28] See, ILO, Official Records, File No. ACD 8-2-309-11; File No. ACD 8-2-309-87; File No. ACD 8-2-309-98.

office on 26 August 1982.[29]

Hence, it is apparent that successive Governments have complied with their constitutional obligation of submission of reports on ratified and unratified Conventions under Articles 22 and 19 respectively of the Constitution of the ILO. We may thus conclude that the Government of Bangladesh has abided by its constitutional obligation of submission of reports.

The mere fact of compliance by the Government of regular submission of reports does not provide any guarantee by itself that the supervisory machinery has been effective and the purpose and objective has been achieved, but it does provide a basis for achieving it. However, on the basis of reports the Committee of Experts is the body to evaluate the degree of legislative conformity and also to be able to ascertain whether the law and regulations have been enacted or modified as a result of ratification and its observations. Thus, our next step will be to scrutinise the reports with a view to analysing them and to explore how this body of information have been subject to comments by the ILO supervisory body and how far the purpose of supervision has been achieved.

5.3 THE COMMITTEE OF EXPERTS ROLE IN THE ASSESSMENT OF REPORTS AND GOVERNMENTS' RESPONSE

Having outlined Governments' degree of compliance with the reporting

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[29] See, ILO Official Records, File No. ACD 7-309-141; ILO, Freedom of Association and Collective Bargaining, 1983 Geneva, p. 1 and 131.

obligation which sets the supervisory machinery in motion, we will now highlight and examine the contents of the reports and the observations of the Committee of Experts. This will on the one hand show the nature of governmental reporting practice and on the other hand provide how this supervisory organ of the ILO has dealt with these reports in an effort to secure compliance with the provisions of the Conventions. It has been already mentioned that the Government of Pakistan duly submitted its first report under Article 22 of the Constitution immediately after ratification of Conventions Nos. 87 and 98.[30] Our discussion in chapter 3 has revealed that after ratification of the Conventions, the Government did not bring any amendment to the existing law i.e., the Trade Unions Act, 1926, dealing with right of association so as to give effect to the Conventions.[31] Let us now analyse how the Government explained its stand in various reports sent to the ILO and how the Committee of Experts responded.

We will begin our discussion with Convention No. 87. In order to reply to question No. 1 of the report form which requires the Government to indicate whether effect has been given to the Articles of the ratified Convention by customary law or practice, or by legislation, the Government admitted:

> No new legislation has been promulgated to give effect to the provisions of the Convention. The rights in question are nevertheless recognised by the provisions of the Trade Unions Act, 1926. The Convention has been brought to the notice of all concerned and its

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[30] See above, p. 191.

[31] See above, p. 101.

provisions are applied in practice.[32]

But as an indication of positive action the Government in its report stated:

> The Basic Principles Committee of the Constituent Assembly of Pakistan has included in its recommendation a provision declaring, *inter alia*, that freedom of association is a fundamental right to be guaranteed in the future Constitution of the State, which is at present before the Assembly.[33]

Question No. 2 of the report form requires the Government to supply available information concerning the customary law, practice, legislative provisions and regulations and any other measures the effect of which is to ensure the application of each of the Articles of the Convention. In the following paragraphs we will highlight and analyse Government's responses.

In relation to Article 2 of the Convention[34] the Government stated that there were no statutory restrictions on the right of workers and employers to establish their organisations without previous authorisation. It was only in the case when these organisations would seek legal status by way of registration under the Trade Unions Act, 1926, that certain conditions specified in Sections 5, 6, 7, 15, 16, 21, 22, 27 and 28 of the Act were to be fulfilled. Regarding Government employees' right of association the report stated:

> Government employees have complete freedom to join organisations of their own choosing so long they do not take part in, or assist

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[32] ILO, Summary of Reports on Ratified Conventions, Report III, (Part I), 37th Session, Geneva 1954, p. 130.

[33] Id.

[34] Article 2 reads as follows: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation".

> financially or otherwise a political movement, by which is meant any movement or activity whose aim is, directly or indirectly, to excite opinion against or to embarrass the legal Government, or to promote feelings of hate and enmity among different classes of citizens or to disturb the public peace.[35]

It appears from the Government's report that freedom of association for Government employees was not only restricted by the terms indicated above but as the report specified that such organisations to get recognition from Government were required to comply with the conditions laid down in the Cabinet Secretariat's Notification No. 6/1/48-Est.(S. E) of 30 August 1948.[36]

On Article 3 of the Convention[37] the Government replied that under the Trade Unions Act, 1926 there were no restrictions on the rights granted to the employers' and workers' organisations by this Article. But this was only true in the case of unions which remained unregistered. However, the Government admitted this fact by mentioning that when any union wanted legal recognition it must comply with the provisions of Sections 5, 6, 7, 15, 16, 22, 27 and 28 of the Act.

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[35] See, ILO, Summary of Reports on Ratified Conventions, Report III, (part I), 37th Session, Geneva 1954, p. 130.

[36] See above, chapter 3, pp. 120-121.

[37] Article 3 reads as follows:
"1. Workers' and employers' organisations shall have the right to draw up their Constitutions and rules, to elect their representatives in full freedom, to organise their organisation and activities and to formulate their programmes.
2. Public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".

On Article 4 of Convention[38] the report indicated that present practice was in conformity with the provisions of the Article in so far as the unregistered Trade Unions were concerned because these were not liable to be dissolved by administrative action under any law. In the case of registered unions, certificate of registration could be withdrawn or cancelled if the union did not fulfil the provisions of Section 10 of the Trade Unions Act, 1926. Regarding Article 5 of the Convention,[39] the Government reported that there was no law contravening the provisions of the Article.

It appears from Government's first report that the enjoyment of the right to freedom of association as envisaged in Articles 1 to 5 of Convention No. 87, was subject to the fulfilment of relevant provisions of the Trade Unions Act, 1926. But so far as the unregistered unions were concerned, they were not subject to any legal limitations and as such could enjoy the rights granted as per Convention No. 87.

The intention underlying these limitations, as the Government explained, was not to restrict the rights of workers and employers to form their associations but designed to help them to develop the administration of the organisations on

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[38] Article 4 reads as follows: "Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority".

[39] Article 5 reads as follows: "Workers' and employers' organisations' shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers".

sound lines.[40] The above justification seems to have been convincing to the ILO as the Committee of Experts at that juncture without being critical about the legislative provisions, in its comment on the Government's report on Convention No. 87 merely observed:

> The Committee wishes to thank the Government for its first report on the application of the Convention, which appears to indicate that the legislation in force does on the whole give effect to its provisions.[41]

From the above observation it appears that although no new legislation had been enacted to give effect to the Convention and unlike unregistered unions, registered unions did not enjoy the rights as envisaged by the Convention, the Committee expressed its general satisfaction on the legislative provisions. Such satisfaction may have been due to the fact that the Committee was less demanding or relying on Article 8 of the Convention[42] considered that for registered unions, compliance with the legislative formalities of the Trade Unions Act, 1926, was within the permissible limits.

Although the provisions of the Trade Unions Act, 1926, at that juncture appears to have satisfied the ILO Committee of Experts, the main objection

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[40] See, ILO Official Records, File No. ACD 8-2-170-87, Report of the Government for the period 1 July 1952 to 30 June 1953.

[41] ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part IV), 37th Session, Geneva 1954, p. 39.

[42] Article 8 reads as follows:
"1. In exercising the rights prohibited for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention".

raised by the Committee was in respect of the right of association of Government employees. As the Committee noted:

> In the case of Government employees certain provisions laid down in the Cabinet Secretariat's notification of 30th August do not appear to be in conformity with the Convention. Under Sections 2 and 3 of this notification, separate association of Government employees must be set up for each of the various categories into which Government servants are broadly classified and the latter may belong only to the associations representing their category. This provision does not appear to be in harmony with Article 2 of the Convention, which provides that workers shall have the right to establish, subject only to rules of the organisation concerned and to join organisations of their choosing.[43]

In response to the above observation, the Government in its report for the period 1 July 1956 to 30 June 1957[44] made an effort to justify the Notification in question by stating that the Government servants were not a homogeneous entity but comprised heterogeneous elements. They belong to different classes by virtue of having different scales of pay, different duties and responsibilities, different terms and conditions of service, which varied from class to class. The interests of various classes of Government servants were divergent and in some cases conflicting. It was therefore not possible for a single recognised body of Government servants to represent effectively the interests and grievances of all classes of Government servants and only an association representing a distinct class of Government servants whose interests were common could do so. The report also stated that administratively it was not possible for the Government to deal with the demands of Government servants whose conditions of service

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[43] See above, note 41, 37th Session, Geneva 1954, at p. 39.

[44] See, ILO Official Records, File No. ACD 8-2-170-87.

were divergent. Having argued as above, the Government maintained its position in the following terms: "the principle of class wise recognition of associations does not, in any way, offend the spirit of Article 2 of the Convention".[45] The Government's above explanation and justification did not satisfy the Committee of Experts which maintained its earlier stand and our scrutiny of the subsequent observations of the Committee till the independence of Bangladesh in 1971[46] exhibits that the Committee on every occasion requested the Government to bring the Government employees' right of association in conformity with Article 2 of the Convention No. 87.

Although in 1957 the Government asserted that the class wise formation of association did not offend the spirit of Article 2 of Convention No. 87 but in 1962 the Government reconsidered the Committee's observations and communicated:

> With reference to the observations of the Committee of Experts and the Conference Committee on the Application of Convention and Recommendations it is informed that amendment of the Establishment Division Notification No. 6/1/48/Ests. (S.E) of 30th August 1948 to bring it in line with the provisions of Article 2 and 5 of the Convention is under way.[47]

The above indication however, did not result in any positive action to bring Government employees' right of association into line with Convention No. 87.

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[45] See, ILO Official Records, File No. ACD 8-2-170-87, Report of the Government for the period 1 July 1956 to 30 June 1957.

[46] For position after independence, see below, pp. 215-216.

[47] See, ILO Official Records, File No. ACD 8-2-170-87, Report of the Government for the period 1 July 1961 to 30 June 1962.

The various reports of the Government on the issue merely noted: "it is ... expected that necessary amendment in the notification would be made shortly";[48] "the question of amendment ... is under consideration";[49] "expected to be amended shortly".[50]

Thus, the Committee of Experts observations, which began with optimism resulted in scepticism, due to inaction of the Government. Accordingly, in its various reports the Committee observed: "the Committee notes with interest that the Government is examining a bill to amend the legislation on Trade Unions";[51] "the Committee expresses the hope that the Bill which is now been under consideration for some time will be enacted at an early date";[52] "the Committee notes with regret that the Bill destined to bring the legislation into conformity with Article 2 of the Convention has not yet been passed";[53] "the Committee regrets to note that the draft amendment of the legislation, which has been mentioned since 1958, is still being examined by the Government";[54] "the Committee notes that the Government does not supply any

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[48] Ibid, Report of the Government for the period 1 July 1962 to 30 June 1963.

[49] Ibid, Report of the Government for the period 1 July 1963 to 30 June 1964

[50] Ibid, Report of the Government for the period 1 July 1964 to 30 June 1965.

[51] See above, note 41, 42nd Session, Geneva 1958, at p. 56.

[52] See above, note 41, 43rd Session, Geneva 1959, at p. 48.

[53] See above, note 41, 44th Session, Geneva 1960, at p. 44.

[54] See above, note 41, 46th Session, Geneva 1962, at p. 95.

further information relating to the rights of civil servants to organise";[55] "the Committee notes that the Government does not refer in its report any further measures taken to bring notification No. 6/1/48-Ests. (S.E) of 30 August 1948 relating to freedom of association of public officials or Government servants, into line with the provisions of Article 2 of the Convention".[56]

From the above account it is clear that ILO Committee of Experts persistent effort to bring Government employees' right of association in line with the Convention No. 87 failed to achieve any positive result.

We will now examine Committee of Experts observations on the Trade Unions Act, 1926 vis-a-vis Convention No. 98 with a view to ascertaining the Committee's supervisory role. We have already noted that the Government having ratified the Convention, on 26 May 1952 duly sent its first report for the period 1 July 1953 to 30 June 1954.[57] The Government's response to questions Nos. 1 and 2 of the report form was as follows:

> The Convention was ratified on the assumption that, by the time it came into force in Pakistan an amendment to the existing Trade Unions Act incorporating the provisions of Article 1 and 2 would have been enacted. However, due to certain administrative difficulties, it has not been possible to have the necessary legislation passed during the period covered by the report. There has therefore been no legislative implementation of Articles 1 and 2, but the Government proposes to table a Bill at an early date.[58]

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[55] See above, note 41, 51th Session, Geneva 1967, at p. 90.

[56] See above, note 41, 56th Session, Geneva 1971, at p. 128.

[57] See above, pp. 191-192.

[58] See above, note 35, 38th Session, Geneva 1955, at p. 198.

Without being critical of the Government's inaction, the Committee of Experts at that juncture merely noted the fact and expressed hope that amendments proposed by the Government will come into force in near future.[59] Our discussion in chapter 3 has revealed that it was not until the promulgation of the Trade Unions (Amendment) Ordinance, 1960, any effort to this end was adopted which gave partial effect to the provisions of the Convention No. 98.[60]

Our assessment of the role of the Committee in the intervening years indicates that instead of condemning Government's inaction, the Committee adopted a technique of polite insistence, as in its various reports the Committee stated: "it would be grateful if the Government would indicate as soon as possible what progress has been made as regards the adoption of the legislation which it considers necessary in order to give effect to the Convention";[61] "the Committee would be grateful if the Government would be good enough to indicate, as soon as possible, whether it has been able to make any progress with a view to ensuring the application of the Convention".[62]

However, when the Government enacted the Trade Unions (Amendment) Ordinance, 1960, the observation of the Committee on the legislation in question vis-a-vis Convention 98 was as follows:

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[59] See above, note 41, at p. 77.

[60] See above, chapter 3, pp. 103-107.

[61] See above, note 41, 39th Session, Geneva 1956, at p. 85.

[62] See above, note 41, 48th Session, Geneva 1957, at p. 95.

> The Committee has taken note with interest of Ordinance No. XIV 1960 amending the Trade Unions Act. Section 28-I of this text provides protection for workers' organisations against acts of interference (Article 2 of the Convention) and protection for workers against acts of discrimination with respect to dismissal {Article 1, paragraph 2(b)}.[63]

From the above observation it is evident that the Committee expressed its satisfaction for the partial fulfilment of Convention No. 98 as Article 1(2)(a) of the Convention was not incorporated in the Ordinance which deals with protection from anti-union discrimination at the time of employment on the ground of union membership. But in its observation for Convention No. 87[64] the Committee did not make any comment although the Ordinance by amending Section 22 of the Trade Unions Act, 1926 restricted workers' right to elect their representatives in full freedom as envisaged in Article 3 of the Convention.[65] Even when the Trade Unions (Amendment) Ordinance, 1961 brought further restrictions on this issue,[66] the Committee remained silent.[67]

However, the Government's response to the Committee's observation on Convention No. 98 regarding Section 28-I was immediate and positive as in its report for the period of 1 July 1962 to 30 June 1964 the Government communicated to the ILO:

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[63] See above, note 41, 45th Session, Geneva 1961, at p. 98.

[64] See above, note 41, 45th Session, Geneva 1961, at p. 75.

[65] For details, see above, chapter 3, p. 83.

[66] Ibid, p. 107.

[67] See above, note 41, 45th Session, Geneva 1961, at p. 75.

> With reference to observations made by the Committee of Experts on the application of Conventions and Recommendations it may be stated that the question of amending Section 28-I of the Trade Unions Act, 1926 as modified by the Trade Union (Amendment) Ordinance, 1960, with a view to incorporating therein provisions along the lines of Article 1(2)(a) of the Convention has been taken up for consideration.[68]

Despite Government's above communication, a year later when the East Pakistan Trade Unions Act, 1965 was promulgated repealing the Trade Unions Act, 1926, it was noticed that having done nothing to incorporate provisions along line with Article 1(2)(a) of Convention No. 98, the new Act in Section 40 merely reproduced the provisions of Article 28-I of the repealed Act. Further, the scope of the exercise of right of association as enshrined in Convention No. 87 was also limited by the new Act.[69] In such a situation the Committee of Experts made several 'direct requests' to the Government to bring the legislation in conformity with the Conventions Nos. 87 and 98.[70] Although the Committee's requests did not evoke instantaneous response but nevertheless in 1969, the Government promulgated the Industrial Relations Ordinance, 1969. This indeed received appreciation from the Committee of Experts as, while noting its observation for Convention No. 98, the Committee observed:

> With reference to its previous direct requests concerning the protection of workers against acts of anti-union discrimination at the time of their engagement, the Committee notes with satisfaction that the Industrial Relations Ordinance 1969, gives effect to the Convention in this

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[68] See above, note 24.

[69] See above, chapter 3, pp. 113-115.

[70] See above, note 24.

respect.[71]

Similarly, in relation to Convention No. 87 the Committee observed:

> The Committee notes with satisfaction that, following its previous observation and direct request the Government has enacted the Industrial Relations Ordinance, 1969 which repeals the East Pakistan Trade Unions Act, 1965.[72]

It is clear from the above observations that the promulgation of the new Ordinance was considered by the ILO to be a direct result of its supervisory comments. However, an evaluation of the circumstances under which the Ordinance was promulgated reveals somewhat different picture. As we have noted earlier, the Ordinance was promulgated by the Martial Law Authority in an effort to blunt the militancy of the working class and achieve popularity.[73] Nevertheless, the Martial Law Authority while promulgating the Ordinance, may have considered the comments and concerns of the ILO, as the new Ordinance in comparison to the repealed Act of 1965 was closer to the provisions of Conventions Nos. 87 and 98.

Soon after the promulgation of the IRO, 1969 and before the ILO Committee of Experts could make any observation on the legislation in question, erstwhile East Pakistan emerged as a sovereign state. However, the new state of Bangladesh immediately becoming a member of the ILO, the legislation came under the ambit of the ILO Committee of Experts supervision.

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[71] See above, note 41, 56th Session, Geneva 1971, at p. 146.

[72] See above, note 41, 56th Session, Geneva 1971, at p. 128.

[73] See above, chapter 3, p. 119.

Accordingly, the Government in 1974 submitted its first report on the application of Conventions Nos. 87 and 98. As far as Convention No. 87 was concerned, the Government's report,[74] without taking consideration of the various provisions of the Ordinance merely highlighted Section 3 of the Ordinance,[75] as giving effect to the provisions of the Convention. Similarly, for Convention No. 98 the Government's report[76] indicated Sections 3 and 15 of the Ordinance to be the corresponding provisions.[77]

In chapter 4 it has been shown that since independence in 1971, the IRO, 1969 has undergone several amendments restricting the exercise of right of association.[78] The discussion below will highlight the various aspects of incompatibility of the legislation vis-a-vis Conventions Nos. 87 and 98 which the Committee has been indicating over the years but has failed to evoke any positive action on the part of the Government to fulfil its international obligations by bringing the legislation into conformity with the Conventions which it has ratified.

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[74] See above, note 23.

[75] For discussion on Section 3, see above, chapter 3, pp. 120-121.

[76] See above, note 24.

[77] For the provisions of Section 15, see above, chapter 3, pp. 124-125.

[78] The Industrial Relations (Regulation) Ordinances of 1975 and 1982 and the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974, were passed to override the provisions of the IRO, 1969.

Restrictions upon the right to join or to hold office in Trade Unions

Soon after the promulgation of the Industrial Relations (Regulation) Ordinance, 1975, which in Section 6 provided that only persons working in the undertaking concerned may be members of a Trade Union, the Committee of Experts in 1977 by a 'direct request'[79] notified the Government that the enactment of the said provision restricted trade union rights guaranteed by Articles 2 and 3 of Convention No. 87. The Committee also requested the Government to re-examine the legislation with a view to giving effect to the guarantees contained in the Convention.[80] But the Government, instead of re-examining the provisions in the light of the suggestions made, re-enacted the provisions by the Industrial Relations (Amendment) Act, 1980, which repealed the Industrial Relations (Regulation) Ordinance, 1975. Section 7A1(a)(ii) of the IRO, 1969, as amended by the Act of 1980 contained in identical terms the provisions of the repealed Regulation of 1975. This prompted the Committee to point out that Section 7A1(a)(ii) of the IRO, 1969 limited the right to be a member or officer of a Trade Union to persons actually engaged in an establishment or group of establishments concerned. Thus, the Committee considered the provisions to be violative of Articles 2 and 3 of Convention No. 87.[81] The observation of the Committee was followed by asking the Government

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[79] See, ILO Official Records, File No. ACD 8-2-309-87.

[80] Id.

[81] See, ILO, Report of the Committee of Experts on the Application of Convention and Recommendation, Report III (Part 4A), 69th Session, Geneva 1983, pp. 115-16.

to re-examine and re-consider the provisions in question.[82] Although the Committee noted incompatibility of the legislation in 1977 and requested the Government to take necessary measures, the Government did not take any positive action nor pass any comment on the issue until 1984 when it reported:

> The Government has since re-considered the provisions under Section 7A(1)(a)(ii) and (b) of Act No. XXIX of 1980 and measures of relaxation is under consideration.[83]

The Committee's response on the above communication was as follows:

> It notes with interest the Government's statement that it is prepared to examine these provisions and that measures to ease them are under study.[84]

The Government's indication of 'under consideration' was followed by the promulgation of Industrial Relations (Amendment) Ordinance, 1985, which brought some amendments to the provisions in question.[85] The Committee noted the abolition of the requirement contained in clause (b) of the Section in question that an officer or member of a Trade Union must cease to be an officer or member of the said Trade Union on the coming into force of the 1980 amendment if he was not employed in the establishment in which the union had been formed and observed that the clause has been abolished because it has ceased to be necessary by reason of the effluxion of time.[86] It further observed:

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[82] Id.

[83] See above, note 79.

[84] See above, note 81, 71st Session, Geneva 1985, at p. 121.

[85] See above, chapter 4, p. 172-173.

[86] See above, note 81, 73rd Session, Geneva 1987, at p. 142.

"the basic requirement contained in Section 7A1(a)(ii) remains in force".[87] The Committee's above observation evoked Government's response as it was considered by the Government that the new amendment brought the provisions in question in conformity with the Convention. Thus, in its report for the period ending 30 June 1988 the Government communicated:

> The provisions of Section 7A1(a)(ii) and (b) have already been amended in 1985 into Section 7A(1)(a)(b). The Government therefore *does not agree to the interpretation of the ILO* [88]in this regard.[89]

Actually, the stipulation formerly embodied in Section 7A(a)(ii) is to be found in the new Section 7(1)(b), but with an important qualification that former employees at an establishment or group of establishments could be members or officers of Trade Unions formed at that establishment. The omission by the Committee in its observation of this 'qualification' may have led the Government to hold the contrary view. Nevertheless, the Committee subsequently pointed out the fact.[90]

Despite Government's disagreement with the 'interpretation of the ILO' as the Government put it, the Committee has consistently taken the view that provisions of this kind do restrict the right of workers to establish and join organisation of their own choosing (Article 2 of Convention No. 87), to elect their representatives in full freedom and to organise their administration and

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[87] Id. and also see, 74th Session, Geneva 1988, at p. 142.

[88] Italics for emphasis.

[89] See above note 79.

[90] See above, note 81, 76th Session, Geneva 1989, at p. 128.

activities (Article 3). The Committee therefore has been requesting the Government to adopt measures with a view to making the present provisions more flexible by exempting from the occupational requirement a reasonable proportion of the officers of an organisation so as to allow the candidature of persons who are outside the profession.[91]

The "30 per cent" requirement for initial or continued registration as a Trade Union

On the issue of 30 per cent requirement for initial or continued registration as a trade union as provided in Sections 7(2) and 10(1)(f) of the IRO, 1969, the Committee of Experts in its various observations[92] has requested the Government to review them in order to bring the provisions into conformity with Article 2 of Convention No. 87. The first of these provisions is to the effect that no Trade Union may be registered unless it has a minimum membership of 30 per cent of the total number of workers employed in the establishments in which it is formed. The second gives the Registrar of Trade Unions the power to cancel the registration of a union where its membership has fallen below the 30 per cent threshold. In reply, the Government in one of its

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[91] See above, note 81, 78th Session, Geneva 1991, at p. 148; 81st Session, Geneva 1994, at pp. 197-98; 82nd Session, Geneva 1995, at p. 152. For the union leaders', workers' and employers' views on the issue, see below, chapter 6, pp. 284-285.

[92] See above, note 81, 71st Session, Geneva 1985, at p. 123; 73rd Session, Geneva 1987, at p. 150; 75th Session, Geneva 1988, at p. 144; 76th Session, Geneva 1989, at p. 130; 78th Session, Geneva 1991, at p. 149; 81st session, Geneva 1994, at p. 198; 82nd Session, Geneva 1995, at p. 153.

reports indicated:

> The provisions of Section 10(f) of the IRO, 1969, as amended by Section 5 of Act No. xxix of 1980, were incorporated to create a strong and healthy trade union movement in the country. Multiplicity of Trade Unions with nominal membership weakens the cause of workers and leads to unhealthy conflict and hampers industrial peace. The principle of 30% was adopted after due consideration of the national conditions.[93]

The Government by another report[94] expressed its inability to review the provisions of law in the following terms:

> The said requirement has attained its objectives of reducing mushroom growth of Trade Unions and it is not considered by the workers as an obstacle to establishment of organisations.[95]

On the other hand, in the opinion of the Committee of Experts, the figure of 30 per cent, applied generally both to small and to large establishments, is excessive and may be an obstacle to the establishment of organisations and thus violative of Article 2 of Convention No. 98.

The extent of external supervision of the internal affairs of Trade Unions

It may be recalled that Rule 10 of Industrial Relations Rules, 1977 introduced the provisions of supervision by the Registrar or any other person authorised by him of the internal affairs of Trade Unions.[96] The power of

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[93] See above, note 79. Report of the Government for the year ending 30 June 1986.

[94] See above, note 79, Report of the Government for the year ending 30 June 1988.

[95] See above, note 79, Report for the year ending 30 june 1989. For the workers' and union leaders' views on this issue, see below, chapter 6, pp. 286-287.

[96] See above, chapter 4, pp. 154-155.

supervision as per the rule which allows the Registrar to enter the premises of a Trade Union or federation of Trade Unions and inspect and seize any record, register or other documents attracted Committee's attention. The Committee has repeatedly considered that the procedure under which an administrative authority has wide power of supervision over the internal affairs of a Trade Union, is incompatible with Article 3 of the Convention No. 87[97] which provides that workers' and employers' organisation have the right to organise their administration and activities and to formulate their programmes and that public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. The Committee therefore asked the Government to reconsider the provisions in question. But the Government instead of reconsidering the provisions in the light of the suggestions, adopted a defensive stand as it communicated to the ILO:

> As regards empowering the Registrar of Trade Unions to inspect and seize any record of Trade Unions and federations, it may be stated that this has been done to ensure proper maintenance of accounts and safeguarding against tampering of documents, misappropriation and misuse of union funds, raised mainly through subscriptions and donations from its members. Hence, it would be evident that the existing provision of law is not to interfere or restrict the right to freedom of association of workers or of employers.[98]

It appears from the above statement that Government considers the issue in question as a facilitating provision whereby the Registrar of Trade Unions

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[97] See above, note 81, 69th Session, Geneva 1983, p. at 116; 71st Session, Geneva 1985, p. at 123; 73rd Session, Geneva 1987, at p. 150; 75th Session, Geneva 1988, at p. 141; 76th Session, Geneva 1989, at p. 129; 78th Session, Geneva 1991, at p. 148.

[98] See above, note 79. Report of the Government for the year ending 30 June 1986.

would help the unions and federations to meet the expectations of their members. At this juncture it may be recalled that in its General Survey in 1983, the Committee of Experts has emphasised that in order to avoid interference by the authorities in Trade Union matters, "supervision of union funds should not normally go beyond a requirement for the organisation to submit periodic financial returns" and that "investigatory measures should be restricted to exceptional cases, when they are justified by special circumstances, such as presumed irregularities that are apparent from annual financial statements or complaints reported by members of the Trade Unions" and "furthermore, ... these controls should be conducted subject to review by the competent judicial authority".[99]

In the absence of any express indication in the provisions of the Rule, Government's explanation that "as per provision of the law the supervision exercised is limited to inspection of account books and calling for clarification relating to maintenance of accounts"[100] can not be considered to provide sufficient guarantee of the provisions of the Convention. Thus, the Committee has been rightly observing for some years that investing an administrative authority such as the Registrar of Trade Unions, with broad discretionary powers to examine the papers of an organisation would create grave danger of

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[99] ILO, Freedom of Association and Collective Bargaining: General Survey, Geneva 1983, pp. 59-60.

[100] See above, note 79. Report for the year ending 30 June 1988.

interference with the guarantees provided by the Convention.[101]

The right of association of public servants

We have already seen that during Pakistani rule when the Convention was first ratified, followed by Government's first report, the Committee's main concern centred on the issue of the right of association of public servants which continued in the following years.[102] As already indicated, during that period the right of association of public servants were governed by the Secretariat's Notification No. 6/1/48 Ests. (S.E.) of 1948 which provided for 'class wise' associations. After independence the situation did not change as rule 29 of the Government Servant's (Conduct) Rules, 1979, following the said Notification, *inter alia* provided for 'class wise' organisations. The promulgation of this rule clearly indicates that the earlier observations of the Committee[103] was simply not taken into consideration. On the contrary the Government in one of its reports to the ILO asserted:

> The Government considers the present position regarding the association of public servants as in conformity with the principles set forth by the Convention.[104]

It needs to be emphasised that Rule 29(a) provides membership of the

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[101] See above, note 81, 76th Session, Geneva 1989, at p. 129; 78th Session, Geneva 1991, at pp.148-49; 81st Session, Geneva 1995, at p. 56.

[102] See above, p. 200.

[103] See above, pp. 201-202.

[104] See above, note 79. Report for the year ending 30 June 1988.

associations to be confined class wise and under rule 29(b) they must not be affiliated to another association[105]. The Committee accordingly observed:

> ... these aspects of legislation are not in accordance with the right of workers to establish and join organisation of their own choosing laid down by Article 2 of the Convention ... and to the right that every Trade Union should have to exercise its activities, to formulate its programmes and to organise its administration without interference from the public authorities, in accordance with Article 3.[106]

The Committee's above observation was not confined to mere pointing out the incompatibility but followed by requests to reconsider the situation in the light of the above comments with a view to giving full effect to Articles 2 and 3 of the Convention in respect of public servants.[107] In its various reports the Government merely indicated that it has noted the observation of the Committee on this point,[108] but provided no indication that it proposes to introduce the changes as requested by the Committee. This led the Committee to note with 'regret' about the continued failure of the Government to give effect to the requirements of the Convention.[109]

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[105] See, Government Servants (Conduct) Rules, 1979.

[106] See above, note 79, 71st Session, Geneva 1985, at p. 122; 73rd Session, Geneva 1987, at p. 149; 75th Session, Geneva 1988, at p. 143.

[107] Id.

[108] See above, note 79. Reports of the Government for the years 1989 and 1990.

[109] See above, note 81, 78th Session, Geneva 1991, at p. 148; 81st Session, Geneva 1994, at p. 198; 82nd Session, Geneva 1995, at p. 152.

Voluntary bargaining in public sectors

In chapter 4 we have discussed the limitations of the right to collective bargaining in public sector industries as a result of the promulgation of the State-Owned Manufacturing Industries Workers (Terms and Conditions Service) Act, 1974.[110] Under the Act the Government may determine wages and other fringe benefits for any worker employed in a state-owned manufacturing industry and that no condition more favourable than those fixed could be granted to the workers concerned. The Committee as early as in 1977 and 1979 reviewed the provisions of the Act and indicated them to be not in conformity with Article 4 of Convention No. 98.[111]

In its reply for the period ending 30 June 1980, the Government explained that the legislation was designed to achieve uniform wage structure for the public sector and to safeguard the interest of workers in less viable industries and therefore did not counteract Article 4 of Convention No. 98.[112] So far as the safeguarding of workers' interest in less viable industries is concerned, the Committee indicated that though it might be normal for a Government to issue direction and guidelines as to wages, the final decision on the matter should rest with the parties to the agreement.[113] Accordingly, the

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[110] See above, chapter 4, p. 143.

[111] See, ILO Official Records, File No. ACD 2-8-309-98.

[112] Id.

[113] See above, note 111. Direct request addressed to the Government in 1981 by the Committee of Experts.

Committee has expressed its concern for a number of years, in relation to the development of collective bargaining in the public sector and has drawn Government's attention to Article 4 of the Convention requesting to take steps to encourage and promote the development and utilisation of machinery for the voluntary negotiation of collective agreements.[114]

Protection against the acts of interference in establishing, functioning and administering unions

Following Government's first report after independence in 1974, the Committee on several occasions requested the Government to indicate in what manner the protection of workers' organisations against acts of interference was being assured under Article 2 of Convention No. 98.[115] In response, the Government in its report for the year ending 30 June 1978 admitted:

> There is no protection in our law against any acts which are designed to promote the establishment of workers organisations under the domination of an employer or employers' organisation as to support workers' organisations by financial or other means, with the object of placing such organisations under the control of an employer or an employers' organisation. Generally, such efforts are not made by the employers in this country.[116]

The Government further assured:

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[114] See above, note 81, 71st Session, Geneva 1985, at pp. 214-15; 73rd Session, Geneva 1987, at p. 262; 76th Session, Geneva 1989, at p. 262; 78th Session, Geneva 1991, at p. 250-51; 81st Session, Geneva 1994, at p. 251.

[115] See above, note 111. Direct request addressed to the Government by the Committee of Experts.

[116] See above, note 111.

> If the circumstances demand the Government will not hesitate to protect workers' organisation against acts of interference whatsoever.[117]

The Committee of Experts noted Government's statement and relying on preventive rather than curative approach requested the Government to consider the possibility of adopting specific provisions guaranteeing legal protection against the acts of interference covered by Article 2 of the Convention.[118] Further, the Committee took the view that by virtue of Article 2 special measures must be taken, in particular through legislation, accompanied by appropriate civil and penal sanctions.[119]

However, the Government instead of adopting any legislative measure subsequently changed its stand and pointed out that Sections 15 and 16 of the IRO, 1969, provide legislative protection with respect to interference in trade union activities.[120] This attracted Committee's attention which observed:

> The Committee noted that Sections 15 and 16 of the Ordinance, taken together with Section 53 do appear to provide an appropriate form of legislative protection against anti-union discrimination as envisaged by Article 1 of the Convention. However, the Committee is not satisfied that these provisions constitute an adequate response to the requirements of Article 2.[121]

The Committee therefore has been requesting the Government to review its legislation with a view to the adoption of an appropriate measure of protection

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[117] Id.

[118] See above, note 111. Direct request addressed to the Government by the Committee of Experts.

[119] See above, note 81, 73rd Session, Geneva 1987, at p. 263.

[120] See above, note 111. Report of the Government for the year ending 30 June 1989.

[121] See above, note 81, 76th Session, Geneva 1989, at p. 263.

against any interference for purposes of Article 2 of Convention No. 98.[122]

Our investigation into the Committee of Experts role in the supervisory process has revealed that in the most recent period of the Committee's history, its reports have been ever more detailed, its observations ever more pointed, and its suggestions for remedial actions more specific. This has resulted due to Government's introduction of various restrictive provisions on trade union rights in the post independence period. It must be pointed out that the Committee's persistence in demanding full implementation of ratified Conventions has been commendable. In the case of certain recurring non-compliance, the Committee has continued to exert pressure with a view to bringing the legislation in conformity with the provisions of the Conventions at some point.

5.4 CASES BEFORE THE COMMITTEE ON FREEDOM OF ASSOCIATION AND THE OUTCOME

Complaints to the Committee on Freedom of Association (CFA) may be submitted by Governments or by organisations of workers or employers. All complaints to the CFA until now have been lodged by the organisations of workers and employers. There are three categories of workers' and employers' organisations which may file complaints: (a) national organisations directly interested in the matter; (b) international organisations of workers, employers

[122] See above, note 81, 78th Session, Geneva 1991, at p. 251; 81st Session, Geneva 1994, at p. 251.

or employers having consultative status with the ILO[123] and (c) other international organisations of workers and employers where the allegations relate to matters directly affecting their affiliated organisations. So far Bangladesh is concerned, all the above three categories of workers' organisations have lodged complaints before the CFA.

We will now examine the cases which have concerned Bangladesh, highlighting the allegations made in the various complaints against the Government; the response of the Government, the examination of these cases by the CFA and the outcome of the procedures with a view to ascertain the role played by the CFA.

Case No. 729: Complaint presented by Bangladesh Workers Federation

The complaint of the Bangladesh Workers Federation was contained in a letter dated 20 November 1972. This was transmitted by the CFA to the Government which sent its observation in a letter dated 24 April 1973.[124]

The complainant's allegations were: a) that the Presidential order No. 55 of 20 May prohibited strikes in public sector industries and b) that new labour policy announced on 25 September 1972 has abolished the system of collective

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[123] The international organisations of workers and employers which presently have consultative status with the ILO are the following: International Confederation of Free Trade Unions, World Confederation of Labour, World Federation of Trade Unions, International Organisation of Employers.

[124] For details of the case, See, ILO, Official Bulletin, Vol. LVII, Series B, No. 1, (Supplement), 1974, pp. 288-90.

bargaining in public sector industries.

The Presidential Order of 1972 which prohibited the right to strike in nationalised industries and public bodies had a very limited scope as it expired on 29 November 1972,[125] so the Government, without showing any embarrassment on its part, merely notified the fact to the CFA. The legislation in question was to expire on the date mentioned unless the Government decided otherwise i.e., to renew it. Now the question arises whether the complaint filed 9 days before the date of expiry of the Order had any bearing on the decision of the Government not to renew the application of the Order. In the absence of any indication by the Government to this effect it may be concluded that there was no direct nexus between the two events. However, as the Order expired, the workers of the public sector were able to enjoy the right in question. Accordingly the CFA considered the problem to be solved and thereby passed no observation on the issue.

On the question of abolishing the right to collective bargaining under the proposed policy, the Government replied that no legislation giving effect to the policy was passed. The Government further informed of its decision to defer the application of the policy with a view to reconsider it in the light of the Constitution which was adopted two and a half months after the declaration of the policy. But at the same time the Government maintained that under the new policy, collective bargaining would be unnecessary in view of the proposed

[125] See above, chapter 4, p. 130.

system of workers participation in the administration of nationalised undertakings and the planned creation of National Wage Board would be empowered to revise wages in the public sector. In view of the above reply of the Government, the CFA observed:

> By declaring that it was bound by the Convention No. 98 the Government took upon itself the obligation to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employer or employers' organisations and the workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.[126]

Thus, the CFA drew attention of the Government to the standards contained in Convention No. 98 for its encouragement and promotion.

Case No. 816: Complaint presented by the National Workers Federation (Jatiya Sramik Federation)

The National Workers Federation (of Bangladesh) presented its complaint in a communication dated 31 June 1975.[127] The complainant described the arbitrary imprisonment of a number of trade unionists without trial and dismissal of many employees and trade unionists including members of the complainant organisation that had taken place in 1972. In particular, the complainant described the situation in the Dhaka Match Factory where, in early 1972, the entire union executive and four hundred members of the union had been driven out of employment and the union office was occupied by the

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[126] See above, note 124, at p. 289.

[127] For details of the case, See, ILO, Official Bulletin, Series B, Vol. LIX, No. 1, 1976, p. 2; Vol. LXI, No. 1, 1978, p. 2; Vol. LXI, No. 2, 1978, pp. 6-8.

official Government union. The complainant further alleged that in 1973, over two hundred workers and leading members of the union in the R-R Jute Mills (Chittagong) were killed by a 'semi-official army squad' under the command of the ruling party leader. Further, according to the complainant, similar killings had taken place in other mills and factories across the country, for example, stated the complainants, the General Secretary of the National Jute Mills Workers Union, Ghorashal, and the publication Secretary of the Jatiya Saramik Federation were both killed by army squads.

The complainant also alleged that in November 1973, the Government by promulgating the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1973, has effectively put an end to the right to collective bargaining in public sector undertakings.

The complainant further added that in 1974, repression of trade union activities continued and thousands of trade union activists were imprisoned under the Special Powers Act, 1974. The complainant also added that the state of emergency proclaimed on 28 December 1974 resulted in suspension of the enforcement of the constitutional guarantee of the right to freedom of association in general and by an executive Order dated 6 January 1975 passed under the Emergency Powers Rules, 1975, the Government prohibited strike action. Finally, added the complainants, the Government dissolved all national Trade Union organisations except its own official Trade Union front, the Jatiya Sramik League to which the Government gave direct support.

However, in a communication dated 20 October 1975 the complainant organisation requested the CFA to keep the case in abeyance until further notice. This, the complainant submitted, was due to the fact that President Khondokar Mustaque Ahmed of the People's Republic of Bangladesh in a recent address to the nation, had announced the firm commitment of his Government to restore normal democratic life by 15 August 1976 and hold a general election by early 1977.[128] The CFA at its session in November 1975, requested the complainant organisation to inform in due course whether it wished the case to be examined further or withdrawn and provide reasons for its decisions. This request was repeated by the CFA at each of its meeting up to November 1977 when noting that no confirmation has been received from the complainant, the CFA requested the Government to transmit its observation on the complaint. This prompted the complainant organisation to respond immediately which in a communication dated 10 December 1977 confirmed that it did not wish the case to be examined.

The CFA took account of the fact that the allegations, although very serious in nature related mainly to the period between 1972 and 1975, since which time there had been important political changes in the country. This factor and in the light of the complainant's statement that discussions were taking place with the Government concerning the restoration of Trade Union

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[128] It may be recalled that on 15 August 1975 the Government against whom the allegations had been made was overthrown by a coup and the country was under Martial Law.

rights, the CFA decided that no purpose would be served in pursuing the examination of the case further and as such decided the case not to be called for further examination.

Case No. 861: Complaint presented by the World Federation of Trade Unions (WFTU)

In its complaint, presented on 10 September 1976, the WFTU alleged that there had been grave violations of Trade Union rights by the authorities in Bangladesh which constituted an infringement of the ILO Conventions Nos. 87 and 98. The WFTU stated that under the Martial Law Regulations all forms of democratic organisations and expressions by the Trade Unions was declared illegal, infringing in particular the right of free assembly and free speech and the right to strikes. The complainant further alleged that the authorities imposed restrictions on workers' right to freely elect the officers of Trade Unions, specially persons who were not working in the enterprise concerned. The WFTU further alleged that the Jatiya Sramik League (the united Trade Union organisation) was dissolved which constituted a direct attack on the right to organise of the workers in Bangladesh. The WFTU also alleged that the authorities in Bangladesh resorted to a large scale arrest of Trade Union leaders who were being kept in detention without trial specified and 11 such Trade Unionists who were arrested and being detained without trial. They were: Mr. Abu Taher Masud, Mr. Udayan Nag, Mr Alauddin Ahmed, Mr. Quazi

Muzammel Hoq, Mr. Saidur Rahman Sadu, Mr. Hasanuddin Sarkar, Mr. Ali Azam, Mr. Chitta Deg, Mr. Abdur Rahim, Mr. Ruhul Amin and Mr. Selim.[129]

In its reply dated 2 March 1977 the Government bluntly stated that no labour leader in Bangladesh was detained for Trade Union activities. According to the Government the labour leader named Alauddin Ahmed was never been detained and Mr. Abu Taher Masud, Mr. Udayan Nag, Quazi Muzammel Hoq and Mr. Hasanuddin Sarkar, Mr. Ali Azam and Mr. Selim were detained for activities prejudicial to the security of the state and not for Trade Union activities. The other four Trade Union leaders, according to the Government, were no longer in detention.

Thus, it appears that except for one leader the Government admitted the allegation of detention but remained silent about other aspects of the complaint i.e., allegation relating to general interference in Trade Union activities and the dissolution of the Jatiya Sramik League. This led the CFA to observe that the Government supplied some information on certain aspects of the case, but supplied no information as regards certain other serious allegations made by the complainant and reminded the Government:

> The purpose of the whole procedure is to promote respect for Trade Union rights in law and in fact, and the Committee is confident that if it protects Governments against unreasonable accusations, Governments on their side will recognise the importance, for the protection of their own good name, of formulating for objective examination detailed factual replies to such detailed factual charges as may be put

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[129] See, ILO, Official Bulletin, Series B, Vol. LX, No. 3, 1977, pp. 57-61; Vol. LXI, No. 3, 1978, pp. 108-113; Vol. LXII, No. 2, 1979, pp. 49-52; Vol. LXIII, No. 1, 1980, pp. 45-47; Vol. LXIII, No. 3, 1980, pp. 71-73; Vol. LXIV, No. 3, 1981, pp. 7-8.

forward.[130]

Accordingly, the CFA requested the Government: a) to furnish further observation on the alleged dissolution of the Jatiyo Sramik League, stating in particular the present situation of the organisation and its ability to carry out normal trade union activities; b) to supply full and precise information concerning the trade union leaders who were alleged to be in detention, including information concerning the charges brought against them and to supply the texts of any judgments against them by the courts and c) to transmit its observation on the allegations relating to general interference in Trade Union activities.

In response to the above request the Government in its communication of 11 May 1978 explained that under Article 117A of the Constitution of Bangladesh, one political party, i.e., BAKSAL was formed in the country and that the Jatiyo Sramik League was incorporated in it as one of its organs and the repeal of the constitutional provision in question by a proclamation of 8 November 1975 resulted in the disappearance of the Jatiyo Sramik League. Further the Government stated that a number of Trade Union organisations affiliated to the Jatiyo Sramik League have once again began to function. In this regard the CFA recalled the principle set forth in the resolution concerning the independence of Trade Union movement, according to which Governments should not attempt to transform the Trade Union movement into an instrument

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[130] ILO, Official Bulletin, Series B, Vol. LX, No. 3, 1977, pp. 58-59.

for pursuance of political aims.

As regards the arrested trade unionists, the Government merely indicated in its letter dated 29 May 1978, that Mr. Abu Taher Masud, Mr. Udyan Nag and Mr. Shamsuzzaman Selim have been released, the first two on 26 and 28 April 1977 respectively and did not mention any date of release of the other person.The Government also stated that information concerning Mr. Ali Azam and Mr. Quazi Muzammel Hoq would be supplied after receipt of the decision of the Supreme Court on the appeals filed by them. However no information was sent regarding the detention of Mr. Hasanuddin Sarkar. This led the CFA to request once again to furnish information regarding him.

The CFA noted with interest that another three Trade Union leaders mentioned by the complainant were released. But nevertheless, noted with regret that Government supplied no information on the precise grounds for their arrest nor stated whether they were brought to the trial before competent judicial authorities. In its letter of February 1979 the Government stated that "no trade union leaders unconnected with political parties were arrested, i.e., no non-political Trade Unionists was detained nor was anyone arrested for Trade Union activities".[131] It also explained that in accordance with law when anyone is in custody he is to be served with the grounds therefor within 15 days of his detention and his case was to be reviewed by advisory boards or Committees consisting of High Court judges and senior civil officials. Further the

[131] ILO, Official Bulletin, Vol. LXII, Series, B, No. 2, 1979, p. 50

Government communicated that Mr. Ali Azam and Muzammel Hoq were released following the order of the High Court Division of the Supreme Court. As all the trade union leaders as specified in the complaint were released, the CFA considered that no useful purpose would be served to examine the allegations concerning them.

As regards allegations concerning interference of Trade Union activities, the Government in its communication of 29 May 1978 sent copies of two notifications of 20 July 1977 which did put an end to the restrictions imposed by Sections 4 and 7 of the Industrial Relations (Regulation) Ordinance, 1977. Under these notifications registration of new Trade Unions and election for determination of collective bargaining agent were allowed. In its November 1978 session the CFA noted the information provided by the Government and as the complainant's allegation also concerned other specific points i.e., right to strikes and to hold meetings, the Committee thus once again requested the Government to communicate its observations.

In its communication of 20 February 1979, the Government stated that restrictions on the right to strike and lockout and freedom of association were imposed only temporarily in view of the emergency prevailing in the country at that time and applied both to workers and to management. It is also mentioned that bans were imposed on meeting and processions generally and not merely on meeting and processions of Trade Unions. Thus, after admitting about the restrictions imposed as alleged by the complainant, the Government

mentioned that bans on meetings and processions no longer existed. Regarding alleged infringement of Trade Union rights under a state of emergency, the CFA concluded that "it was not competent to express an opinion on the need or advisability of such legislation, which is a question purely of political character".[132] The CFA was, however, of the opinion that it should consider the repercussions which such legislation might have on the free exercise of Trade Union rights. Thus, in the present case, the CFA observed that the ban on certain Trade Union activities imposed in connection with state of emergency involved serious restrictions. However, as the restrictions were no longer in effect, the CFA noted the information of the Government with 'interest', an expression used by the CFA to indicate satisfaction.

Case No. 955: Complaint presented by the World Federation of Trade Unions

The complaint dated 2 April 1980 contained that Mr. Manzurul Ahsan Khan, Secretary of the Trade Union Kendra and several public service employees on strike were arrested. The complainant urged that the Government should release all arrested Trade Unionists and show respect for Trade Union rights.[133]

The Government in its reply dated 23 May 1980 stated that Mr.

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[132] Ibid, p. 51.

[133] For details of the case, see, ILO, Official Bulletin, Series B, Vol. LXIII, No. 3, 1980, pp. 12-13.

Manzurul Ahsan Khan was taken into custody by law enforcing authorities on political grounds and not for Trade Union activities. The Government also indicated his release from detention. Regarding the arrest of public service employees, the Government pointed out that the arrested members of the Government employees' association were released after a settlement was arrived between the parties.

The CFA in its observation noted the different reasons given by the complainant and the Government for the arrest of Mr. Manzurul Ahsan Khan, the former alleging that he was detained for his Trade Union activities, the latter stating political grounds. In view of the above situation the CFA drew attention of the Government to the principle that measures of preventive detention may involve serious interference with Trade Union activities and emphasised the rights of all detained persons to receive a fair trial at the earliest possible time. However, as the detainee was released the CFA decided not to examine the case further.

Case No. 1214: Complaints presented by eleven national Trade Union Federations

In their letter of 17 June 1983 eleven national Trade Union federations[134]

[134] The Bangladesh Sanjukta Sramik Federation, Bangladesh Trade Union Kendra, Samajtantrik Sramik Front, Bangladesh Workers Federation, Jatiyo Sramik Jote, Bangladesh Sramik Federation, Bangladesh Ganotantrik Sramik Andolan, Bangladesh Sramik Federation, Jatiyo Sramik League, Jatiyo Sramik Federation and the Bangladesh Federation of Labour.

alleged that promulgation of Industrial Relations (Regulation) Ordinance (No. XXVI) of 30 August 1982 violated Conventions Nos. 87 and 98 which the Government has ratified. In particular the complainants cited the following provisions of the Ordinance: Section 4 (1)(2),[135] Section 4(3),[136] Section 7,[137] Section 8.[138] In addition, the complainants referred generally to other legislative restrictions on Trade Union rights as specified in the IRO, 1969 i.e., power of the Registrar of Trade Union to cancel the registration of any Trade Union having less than one third of the total number of employees in the establishment(s) concerned; denial of Government employees' right to form Trade Unions; prohibition of non-employees of that undertaking from holding Trade Union office.[139]

The Government's response of 21 August 1983 on the above allegations was very brief and concerned only with the Industrial Relations (Regulation) Ordinance 1982. Thus being silent on other restrictive issues of Trade Union

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[135] It dealt with prohibition of any election for determination of collective bargaining agents; discretion of the Registrar of Trade Unions to declare any registered Trade Union as collective bargaining agent.

[136] It provided that to be allowed as collective bargaining agent, a Trade Union must have not less than one third of the total number of employees in the establishment(s).

[137] It dealt with prohibition on the holding of any meeting, including a meeting for the election of the executive committee of the Trade Union without prior permission of the Government.

[138] It dealt with prohibition of strikes and lockouts and any breach punishable with a maximum of two years imprisonment or a maximum fine of five thousand taka or both.

[139] See, ILO, Official Bulletin, Series B, Vol. LXVI, No. 3, 1983, pp. 89-93.

rights of the IRO, 1969 the Government merely stated:

> The restrictive provisions in question are temporary in nature and are under constant review with a view to relaxations/amendments, as well as to ultimate withdrawal which could coincide with the revival of the constitutional provisions in the country.[140]

Despite above assurance the CFA drew Government's attention to the following aspects of the Ordinance in the following manner:

> Section 4 deprives workers of their right to choose their representatives for collective bargaining purposes in full freedom;
>
> Section 4(3) imposes an unnecessary high membership proportion (one third) for Trade Unions to be eligible to be declared as collective bargaining agents;
>
> Section 7 deprives workers of freedom of assembly which is indispensable to the free exercise of the Trade Union rights and moreover, deprives workers of the right to elect their representatives in full freedom and to organise their administration and activities; taken further, such a prohibition denies workers the right to establish and join organisations of their own choosing;
>
> The right to strike is one of the essential means available to workers of promoting and defending their occupational interests and Section 8, when read with Section 6 (compulsory arbitration to settle industrial disputes), results in a severe limitation on the workers' right to organise their activities and formulate their programmes.[141]

The CFA's above observation was followed by a request to the Government to amend the legislation. With regard to legislative restrictions of the IRO, 1969 as mentioned by the complainant, the CFA endorsed the Committee of Experts observation which noted the provisions to be incompatible with the Conventions on freedom of association and requested the Government to reconsider the provisions. However, the CFA referred the legislative aspect of the case to the

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[140] Ibid, p. 90.

[141] Ibid, p. 91.

Committee of Experts for continued supervision within the regular framework of the ILO supervisory machinery as it does in similar situations.

Case No. 1246: Complaint presented by World Federation of Teachers Unions

In its communication of 7 November 1983, the complainant alleged that professor Shareeful Islam, Secretary General of Bangladesh College Teachers Association was imprisoned for one year because of participating in an informal meeting of the association at its head quarter. In its reply of 16 February 1984 the Government notified the CFA that Mr. Islam was sentenced by a competent Court to rigorous imprisonment for one year because of misappropriation of funds and not for participating in an informal meeting of the association. By a subsequent communication dated 23 April 1984 the Government informed the CFA about the release of Mr. Islam.[142]

The CFA on the basis of information at its disposal noted the contradictory reasons given for imprisonment by both the parties. Further the Government did not specify whether the alleged misappropriation of funds was of Trade Union's fund or other. The CFA in the absence of any detailed information recalled:

> In cases such as this involving the arrest, detention or sentencing of a Trade Union official, it has always taken the view that individuals have the right to be presumed innocent till found guilty.[143]

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[142] See, ILO, Official Bulletin, Serirs B, Vol. LXVII, No. 2, 1984, pp. 22-23.

[143] Ibid, p. 23.

However, in view of the fact that the Trade Union leader in question was released, apparently before the expiry of his prison sentence, the CFA considered that the case did not require further examination.

Case No. 1259: Complaint presented by the Trade Unions International of Transport Workers

In its communication of 3 February 1984, the complainant alleged that four leaders[144] of its affiliated organisation, i.e., the Chittagong Port Workers Union were under arrest for almost one year. By a further communication of 6 March 1984 the complainant reported the arrest of Mr. Manzurul Ahsan Khan a leader of another of its affiliated organisations. In its reply of 14 July 1984 the Government merely stated that the arrested trade union leaders were released after withdrawal of cases against them.[145] The CFA in its observation pointed out that the complainant organisation neither alleged nor provided further information to show that the complaint was based on Trade Union activities nor specified why the arrests were unlawful.

However as the arrested union leaders were released, the CFA considered that the case need not be called for further examination.

From the cases discussed above, it is apparent that the allegations in the various complaints concerned the arrests and detention of trade unionists and the

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[144] Mr. Abdul Kalam, Mr. Jalaluddin, Mr. Nazrul and Mr. Shiek Manik.

[145] See, ILO, Official Bulletin, Series B, Vol. LXII, No. 3, 1984, pp. 18-20.

infringement of trade union rights imposed by legislative enactments. In cases Nos. 955 and 1246 the Government furnished the information that the detainees were not arrested for their trade union activities but for political activities and misappropriation of funds respectively. In case No. 1259 the Government released the detainee before reporting to the CFA. So did the Government in case No. 955. The consideration of case No. 729 by the CFA was of no practical value as the Presidential Order No. 55 of 1972 prohibiting strikes in public sector was withdrawn before the case came up for consideration and the Government having deferred the application of its labour policy. Case No. 816, although concerned serious allegations, was not examined on merits by the CFA as the complainant did not wish the case to be examined. In case No. 861 the CFA continued the examination of the case and insisted that the Government should furnish details of the grounds of arrests and detention of the detainees.. The CFA pursued till the Government released the detainees. Thus, in the cases discussed above, the Government released all the detainees at some point during the pendency of the case and informed the CFA accordingly.

The question now arises, how far the CFA can be credited for this? Actually, there is no way of summarising the success of the procedure in quantitative terms as neither the Government nor the CFA make any public announcement on the issue. The conclusion is to be inferred from the context. Thus, the communication of complaints followed by subsequent release of arrested persons as mentioned in various complaints, whatever be the time gap,

may be considered to have had some bearing on the decision of the Government. The procedure has been of significance as it has shown the awareness and concern of the working class of their rights and on the other hand caused the Government to explain its position in an international forum. Also, it must be emphasised that the procedure has been utilized by some national and world Trade Union federations and the more and more use of it in the event of violation of Trade Union rights may result in making the procedure more effective.

But at the same time it may be argued that the release of various detained alleged trade unionists resulted not because of the CFA procedures but because the purposes for which they were arrested by the Government in power were achieved. Regarding allegations concerning legislative incompatibility with the ILO Conventions, the CFA in above case No. 1246 requested the Government to amend the legislation. The Committee of Experts indeed has repeatedly pointed out the various legislative incompatibilities in the domestic law vis-a-vis ILO Conventions which we have detailed earlier in our discussion. But in its attempts, the CFA failed to evoke any positive response from the Government. There is hardly any indication that the attempts by the CFA influenced Government's decisions or policy making. Accordingly, so far as Bangladesh is concerned, from the cases discussed above, no positive conclusion can be reached as to the success of the CFA procedure. Overall, it may be right to conclude, that the supervisory role of the ILO in ensuring compliance with

the ratified Conventions has hardly achieved its goal.

CHAPTER 6

THE RIGHT TO FREEDOM OF ASSOCIATION IN BANGLADESH: TESTING AWARENESS, OPINION AND ATTITUDES OF THE BENEFICIARIES

This chapter attempts to inquire into the awareness and attitudes of the workers, union leaders and employers about the ILO and its Conventions on freedom of association. In particular, it examines their opinions on the extent of the right to establish trade unions and their functioning as well as their awareness and satisfaction about the provisions of the Industrial Relations Ordinance, 1969, dealing with the right to freedom of association. The study was undertaken with the aid of field research following the questionnaire survey method. The following sections first elaborate the research design and then present and analyse the findings. It may be emphasised that the presentation here is based entirely on interviews with the respondents included in the sample and does not question the correctness of their views.

6.1 DESIGNING AND PRE-TESTING THE QUESTIONNAIRES

In the present research, structured questionnaires were used. As the success of the questionnaire method of collecting information depends largely upon the proper design of the questionnaire, a pilot study was undertaken which involved discussions with eminent trade unionists, employers, workers and

academics with regard to the following issues: (a) the information to be sought (b) the number of questionnaires required (c) the manner in which the individual questions will be sequenced (d) the form of response each question will have (e) the content of each question and (f) the manner in which the questionnaires will be administered.

As a result of the pilot study, it was decided to frame three sets of questionnaires[1] for the three group of respondents i.e., trade union leaders, workers and employers (hereinafter referred to as 'target groups'). Although, three sets of questionnaires were constructed, the content of the questions in all the three sets remained the same except the issue on test of attitudes of the respondents towards the ILO and its Conventions on freedom of association. This was so designed because the 'target groups' were considered as being examined on the same issues in order to assess differences of opinion, awareness, and attitude of the respective groups.

Each questionnaire consisted of two parts, the first concerning factual information, i.e. the respondent's identification and level of education, while the second dealt with a series of substantive questions. These questions were logically arranged in groups maintaining the sequence in terms of the purpose and of the persons who would supply the information. In order to reply, respondents were provided with the option of fixed alternative and multiple choice answers depending on the nature of questions asked. This was done after

[1] For questionnaires, see Appendices.

the experience of the pilot study, as it appeared that it would not only facilitate tabulation of data but also lead to tables of quantified direct responses.

After drafting the questionnaires, it was decided to pre-test them on the samples. This pre-testing method occupied a significant place in the research since it helped to redesign the questionnaires on the basis of practical difficulties faced in gathering the required information. Through the pre-testing procedure many problems concerning the questionnaires were settled before the actual field operation commenced as unforeseen defects were removed and corrected at this stage of research. For example, some questions were dropped, some had to be asked in a different form, the sequence had to be changed and some new questions were added.

6.2. SAMPLE SIZE AND SAMPLING FRAME

Having designed the questionnaires, a total of two hundred respondents were considered to be the appropriate sample size taking from three categories of respondents in the following distribution: workers 100; trade union leaders 50; employers 50. The choice of such sample sizes was not arbitrary but based on the limitation of the tenure of field research[2] and in view of the objectives of the study.

A larger sample was not deemed essential because the industrial workers of Bangladesh could be seen as a highly homogeneous group in so far as their

[2] For the period of field investigation, see below, p. 248.

socio-economic, cultural, religious, linguistic and ethnic background is concerned.[3] Heterogeneity in their behaviour, whether in the work place or in unions, was not to be expected as most of them have been recent migrants from villages, belonged to the same religion and also spoke the same language. There have also been little caste, sectarian and tribal distinctions among them.[4] This factor has helped to promote a behavioural cohesion among them and led me to accept a relatively small sample size. Deciding what sample size to use is almost a matter more of judgement than of calculation. Further, it is not found in the methodology of social science research that a certain percentage of population is to be taken from the total population for making the sample size representative. Thus, the criteria of deciding sample size are subjective rather than objective depending on the circumstances, nature and scope of the research. Hence, taking into consideration of limitation of time in carrying out the field research, the sample size, as taken for the study, might be deemed adequate.

Having decided the size of samples, the next step was to decide the type of sampling to be used in selecting the samples. After considering various types of sampling techniques, keeping in view the study objectives, the simple and stratified random methods of sampling were chosen.[5]

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[3] See, Khan, A. A., Industrial Relations in Bangladesh: A Study of Trade Unionism, Unpublished Ph.D. Thesis, 1987, University of Chittagong, Bangladesh, p. 21.

[4] Id.

[5] For various types of sampling, see, Moser, C. A., and Calton, G., Survey Methods in Social Investigation, London 1971, pp. 61-210.

Of the different industrial sectors, the sample of workers was drawn from the jute and textile industries, as these two sectors have a long history of trade unionism and are the major employers of industrial labour in the large-scale manufacturing sector of the country, not to speak of their importance in the national economy. Before selecting the sample of workers it was first necessary to select the enterprises from which the sample of workers was to be taken. Accordingly, lists of jute and textile enterprises were collected from the Bangladesh Jute Mills Corporation and Bangladesh Textile Mills Corporation to cover the public sector while lists of private sector jute and textile enterprises were collected from Bangladesh Jute Mills Association and Bangladesh Textile Mills Association. As these enterprises were located all over the country in different districts, keeping in view the length of field research, it was considered to take the sample of enterprises from two districts only. Accordingly, the sample of enterprises was drawn from the districts of Dhaka and Jessore. The selection of Dhaka district was purposive, it being the capital of the country and also having within its boundary the highest number of enterprises under study in comparison with other districts.[6] The district of Jessore was chosen following simple random method of selection.

Having determined the sample of districts, the next task was to select the sample of enterprises. Thus, according to alphabetical order a sample of eight

[6] Of 93 textile enterprises of the country, both public and private, 42 were located in the district of Dhaka. Similarly, of 72 jute enterprises, 28 were located in the district of Dhaka.

enterprises was taken from the district of Dhaka i.e., four from Jute and four from textile: two each the public and private sectors. Following the same method four enterprises were taken as sample from the district of Jessore. Hence, the total number of sample enterprises was twelve. From these enterprises one hundred workers were chosen as sample following the simple random method of selection in the following distribution: nine workers from each sample enterprise of Dhaka district (i.e., seventy two) and seven workers from each sample enterprise of Jessore district (i.e., twenty eight).

The Trade Union structure in Bangladesh comprises both plant level unions at the base and federations of Trade Unions at the national level.[7] Therefore, the sample of trade union leaders was selected from basic unions as well as from the national federations of Trade Unions. Following the method as followed in sampling the workers i.e., simple random method, twenty five basic level union leaders, were chosen from the sample enterprises of jute and textile. The other twenty five respondents were chosen from amongst the leaders of twenty three registered national federations of Trade Unions[8] following the random method of selection. The national federations of Trade Unions, because of their position as apex organisation of Trade Unions affiliated to them, play a vital role in the trade union movement of the country. The whole movement

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[7] For Trade Union structure in Bangladesh, see, Alam, F.,"Some Aspects of Trade Union Structure in Bangladesh" in Chittagong University Studies, (Commerce), Part I, Vols. V-VI, 1981-82, pp. 1-22.

[8] According to the Department of Labour, at the time of carrying out field research twenty three registered national federations of trade unions existed in Bangladesh.

is in fact structurally divided along political and ideological lines through the leadership of these federations and thus it was considered necessary to take the leaders of national Trade Union federations as sample .

In order to select a sample of employers, three categories of employers were taken into consideration: employers of jute and textile enterprises and the employers representing the Bangladesh Employers' Association. The Bangladesh Employers' Association is a national organisation representing all sectors of industry, trade, banking and insurance, etc. It was established in 1951 and since then it has remained the only association of its kind in Bangladesh. Following the simple random method of selection, ten members out of twenty members of its executive committee were taken as sample . Following the same method forty employers twenty from the jute sector and twenty from the textile sector were taken as the sample of employers for the purpose of the study.

6.3 TECHNIQUE AND PERIOD OF DATA COLLECTION

After designing the questionnaires and selecting the sample , administering the questionnaires was the next step. Of the different techniques available to administer questionnaires,[9] the personal interview method was adopted. Thus, the questionnaires were filled in by the writer on the basis of personal interviews. The reason for adopting this method is that information so obtained is likely to be more accurate since at the time of interview I could

[9] For various means of administering questionnaires, see, Moser, C. A., and Calton, G., above note 5, at pp. 257-302.

clear up doubts and if necessary, explain the questions to the respondents. Further, for some of the respondents, especially workers who were not well educated, it would not have been possible for them to fill in the questionnaires themselves, no matter in what language or in what form the questionnaires were constructed. However some respondents filled the questionnaires by themselves as they preferred to do so.[10]

In interviewing workers and union leaders, I avoided the presence of the management of the industry concerned so that the respondents could speak as freely as possible without being influenced by management. All possible efforts were made to establish contact with the respondents chosen on the basis of random sampling by paying, whenever necessary, repeated visits. In a very few cases the respondents could not be contacted. In cases where the respondents could not be contacted despite all efforts, another respondent was chosen. Anticipating such situations, a few more persons had been included in the sample chosen beforehand than the number required in each category of respondents. The first missing sample was substituted by the first sample kept in reserve and the second by the second and so on. The method of substitution may not be satisfactory in the sense that it might have impaired the randomness of the sampling method to some extent, but in order to complete the field-work within the scheduled time this method had to be followed.

Utmost care was taken to avoid omission of entry in the questionnaires,

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[10] 12 respondents fell in this category, eight of which were the employers and the rest union leaders.

yet, three responses in the case of two samples (two in one sample and one in one sample) were not entered at all.[11] To remedy the defects I tried to contact the respondents but succeeded only in one case; the other respondent could not be contacted. This omission of entry in the questionnaire has been indicated as 'no response' in the ultimate analysis while utilising the other entries of the questionnaire.

The field investigation was carried out between 1 July, 1992 and 30 November, 1992. Hence, the data collected through the questionnaire survey method and presented and analysed in this study refer to that period only.

6.4 FINDINGS OF THE FIELD RESEARCH

The purpose of this chapter being to test the awareness, opinion and attitude of the respondents about the various aspects of the right to freedom of association, the field investigation was conducted, first by enquiring about the level of education of the respondents with a view to ascertain if education has had any bearing on their responses. The reported level of education of the respondents is shown in diagram No. 1.

[11] These respondents filled the questionnaires by themselves.

DIAGRAM NO. 1

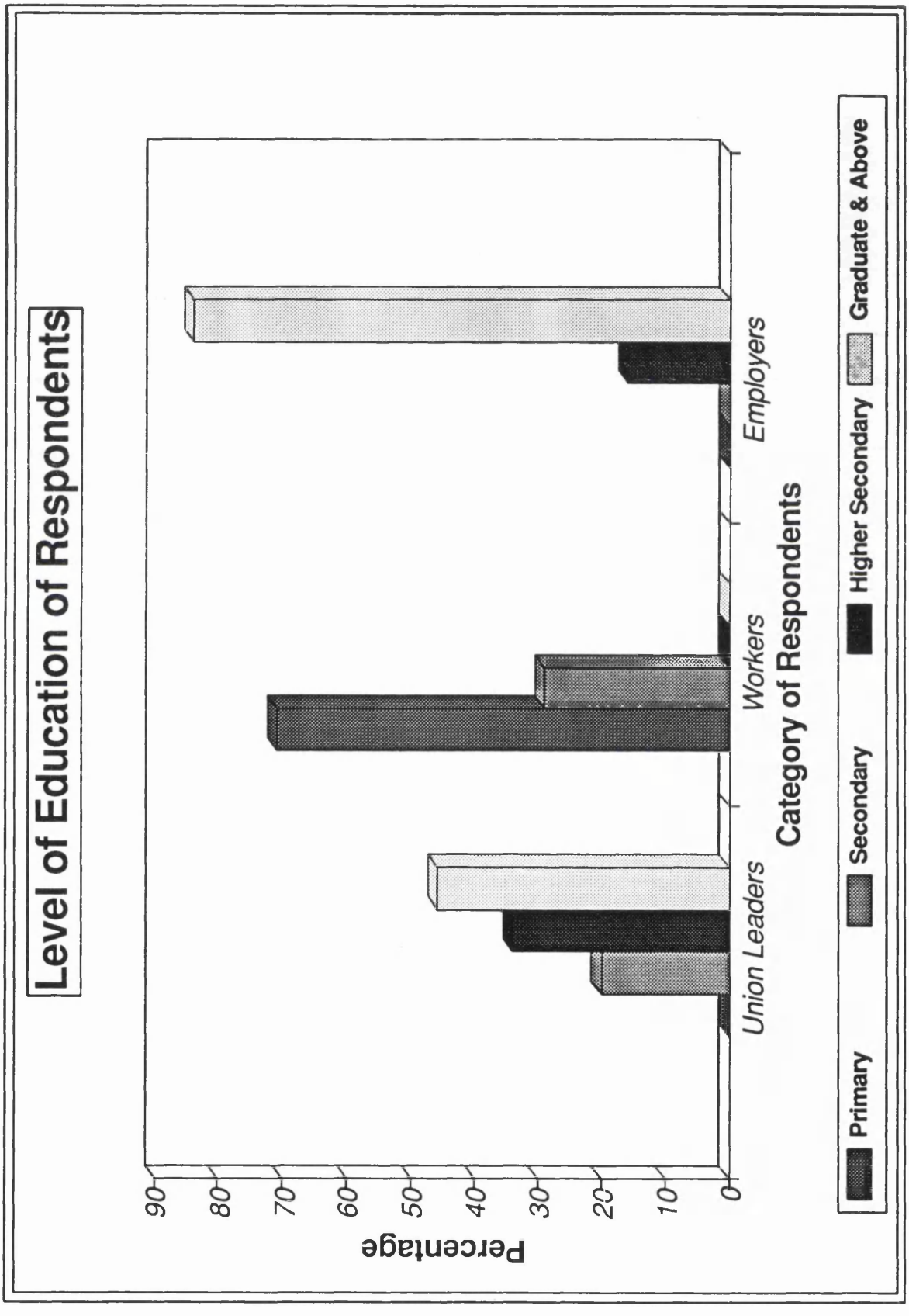
Level of Education of Respondents
Percentage
0
10
20
30
40
50
60
70
80
90
Union Leaders
Workers
Employers
Category of Respondents
Primary
Secondary
Higher Secondary
Graduate & Above

Diagram No. 1 shows that 20% of union leaders (10 out of 50) have secondary education and 34% (17 out of 50) have higher secondary education, while 46% (23 out of 50) are graduate and above. It is to be noted that none of the union leaders belonged to the primary education category. On the contrary, 71% of workers have primary education and only 29% possess secondary education, none representing higher secondary and above level of education. The study of employers on the other hand provide an opposite picture as 84% (42 out of 50) of employers responded to have graduate and above level of education, while only 16% (8 out of 50) possess higher secondary education. The study has revealed that the employers have a higher level of education and from this finding it can not be generalised that the employers in general possess the level of education as described above. This higher rate of education has been due to the sampling frame as adopted. As mentioned earlier, the employers were chosen from the large scale manufacturing sectors of the country and from amongst the members of the executive committee of the Bangladesh Employers' Association who occupy a prominent economic and social position in the society. It may be mentioned that they were chosen not because of the above reason but because of the fact that they are more associated with the trade union affairs of the country.

It is perhaps surprising to note that while as one would expect none of the workers have higher secondary and above level of education, 46% of union leaders were graduate and above. This may be attributed to the fact that 50%

(25 out of 50) of the sample of union leaders were chosen from amongst the leaders of national federations of trade unions and out of that 46% belonged to this category. The remaining 4% had higher secondary education. Another reason is that as the IRO, 1969 allows non-workers to be union executives at the level of national federations of trade unions, so some social workers and politicians having good educational background engage themselves in trade union activities. 50% (25 out of 50) of the sample of union leaders who were chosen from basic level unions and who were all actual workers employed in their respective establishments provided a different picture as none of them were graduates or above and only 30% (15 out of 25) have higher secondary education while 20% (10 out of 25) have secondary education.

6.4.1 TESTING AWARENESS ABOUT THE ILO AND ITS CONVENTIONS ON FREEDOM OF ASSOCIATION

Respondents' awareness of and familiarity with the ILO itself has to be established as the starting point of the inquiry into the impact of the ILO Conventions on freedom of association in the domestic arena of Bangladesh. So before engaging into the inquiry about the state of awareness of the ILO Conventions, it was considered necessary to investigate the respondents' state of awareness with the organisation itself. The findings of this investigation are presented below in table No. 1.

TABLE NO. 1

AWARENESS ABOUT THE EXISTENCE OF THE ILO

ARE YOU AWARE ABOUT THE EXISTENCE OF THE ILO?		RESPONSES			
		YES		NO	
CATEGORY OF RESPONDENTS	NUMBER OF RESPONDENTS	No.	%	No.	%
UNION LEADERS	50	50	100	0	0
WORKERS	100	30	30	70	70
EMPLOYERS	50	50	100	0	0

From table No. 1 it is evident that all the trade union leaders and employers are aware about the existence of the ILO, while only 30% of the workers are aware about the existence of the ILO. The field investigation thus shows that a substantial majority of the workers i.e. 70%, have no idea about the existence of the ILO. The reasons of unawareness will be discussed later in this chapter.[12]

Respondents those who replied in affirmative were asked to state their source of awareness. The findings of this investigation are presented in table No. 2.

[12] See below, p. 254.

TABLE NO. 2

SOURCE OF AWARENESS ABOUT THE EXISTENCE OF THE ILO

SOURCE OF AWARENESS ABOUT THE EXISTENCE OF THE ILO	RESPONDENTS					
	UNION LEADERS		WORKERS		EMPLOYERS	
	No.	%	No.	%	No.	%
OWN READING	30	60	0	0	50	100
MASS MEDIA	4	8	0	0	0	0
LOCAL ILO OFFICE	0	0	0	0	0	0
POLITICAL LEADER	3	6	4	4	0	0
UNION LEADER	13	26	21	21	0	0
EMPLOYER	0	0	2	2	0	0
WORKER	0	0	5	5	0	0

It is significant to note that 60% (30 out of 50) of union leaders are aware of the ILO through own reading, while 26% (13 out of 50) of union leaders have come to know from a fellow union leader. Only 6% (3 out of 50) of union leaders expressed that they derived the knowledge from political leaders and the remaining 8% (4 out of 50) acquired knowledge through mass media. Of the 60% union leaders who gave own reading as their source of awareness, 50% (25 out of 50) were the leaders of national federations of trade unions, i.e., all the respondents chosen from this category. This has reflected their higher level of education and further as national level leaders they could be expected to have such knowledge. The remaining 10% (5 out of 50) of respondents were from amongst the basic level union leaders. The awareness of 26% of union leaders (who were all leaders of basic level unions) about the ILO

from one or other federation level leader reflects the interaction amongst them.

It has been shown in table No. 1 that all the employers are aware about the ILO. When asked about the source of information, all of them indicated academic exercise. Their response seems convincing as in diagram No.1 it has been shown that they possess a fairly high level of education.

As mentioned earlier (see, table No. 1) only 30% workers know about the ILO. As to their source of information, 21% mentioned that they came to know from their union leaders, 5% mentioned fellow workers and 4% political leaders.

The 70% of workers who claimed no knowledge of the existence of the ILO were requested to explain the reasons for not knowing. In reply, 36% suggested lack of education as the main reason, while 18% admitted lack of interest but 16% thought that they ought to have been informed. When they were asked whom they thought should have informed them, some mentioned their union leaders. To quote one worker:

> Because of our background and academic limitations we are not in a position to know about the existence of an organisation like the ILO by ourselves. The union leaders should take initiative to make us aware of the establishment and activities of the ILO.[13]

Having investigated about the awareness of the ILO generally, inquiring about the ILO Conventions on freedom of association was the next step, as it would enable us to know to what extent the message of the Conventions have reached to the respondents. The findings of this search are presented in table No. 3.

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[13] Personal interview dated 12.8.92. Translated from Bengali.

TABLE NO. 3

AWARENESS ABOUT THE EXISTENCE OF THE ILO CONVENTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATION

ARE YOU AWARE THAT THE ILO HAS LAID DOWN SOME CONVENTIONS ON RIGHT TO FREEDOM OF ASSOCIATION ?		RESPONSES			
		YES		NO	
CATEGORY OF RESPONDENTS	NUMBER OF RESPONDENTS	No.	%	No.	%
UNION LEADERS	50	44	88	6	12
WORKERS	100	24	24	76	76
EMPLOYERS	50	50	100	0	0

Table No. 3 shows that 88% of union leaders (44 out of 50) are aware about the existence of the ILO Conventions on freedom of association while only 24% of workers have such knowledge. On the other hand all the employers as interviewed are aware about the ILO Conventions on freedom of association. The above respondents' extent of knowledge about the provisions of the Conventions will be shown later in this chapter which will depict their actual awareness of the rights detailed in the Conventions.[14] The 12% of union leaders who denied any knowledge of the existence of the Conventions were from the basic level unions having only secondary educational background. The level of education thus appears to be an important determinant factor in the responses of the respondents. The respondents' source of awareness about the ILO Conventions on freedom of association which is shown below in table No. 4 further establishes that proposition.

[14] See below, pp. 257-260.

TABLE NO. 4

SOURCE OF AWARENESS ABOUT THE EXISTENCE OF THE ILO CONVENTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATION

SOURCE OF AWARENESS ABOUT THE EXISTENCE OF THE ILO CONVENTIONS ON RIGHT TO FREEDOM OF ASSOCIATION	RESPONDENTS					
	UNION LEADERS		WORKERS		EMPLOYERS	
	No.	%	No.	%	No.	%
OWN READING	24	48	0	0	35	70
MASS MEDIA	3	6	0	0	4	8
LOCAL ILO OFFICE	0	0	0	0	0	0
POLITICAL LEADER	4	8	4	4	3	6
UNION LEADER	13	26	15	15	0	0
EMPLOYER	0	0	0	0	8	16
WORKER	0	0	5	5	0	0

It has been mentioned earlier in table No. 3 that 88% of union leaders are aware about the existence of the ILO Conventions on freedom of association. Table No. 4 shows that 48% (24 out of 50) of union leaders have derived their information from own reading. All these respondents were the leaders of the national federations of Trade Unions. Only 6% (3 out of 50) of union leaders acquired knowledge through mass media, while 8% (4 out of 50) through political leaders and another 26% (13 out of 50) from fellow union leaders. All the respondents who indicated mass media, political leaders and fellow union leaders as their source of awareness were the leaders of basic level unions, except one who was a leader of one trade union federation.

Of the 24% workers having knowledge about the existence of the ILO

Conventions on freedom of association (see table No. 3), 15% derived their knowledge from their union leaders, 4% from political leaders, 5% a fellow worker. The majority of the employers on the other hand i.e., 70% (35 out of 50) have knowledge through academic exercise. Only 16% (8 out of 50) responded to have knowledge through fellow employers, while 6% (3 out of 50) from political leaders and 8% (4 out of 50) through mass media. The local ILO office was suggested in the questionnaire as a possible source of information to find out whether the local ILO office in Bangladesh has been playing any significant role in communicating to the workers knowledge of the rights advocated by the ILO. Though none of the respondents gave local ILO office as the source, one union leader recognised:

> The local ILO office occasionally undertakes workers' education programmes. But the effort is far from sufficient and without the Government's direct intervention and the employers' cooperation in the matter, virtually no progress in educating the workers is practical or possible.[15]

Those respondents who knew about the existence of the ILO Conventions were further requested to state the extent of their knowledge about the Conventions and the findings are shown in the following diagram No. 2.

[15] Personal interview dated 4.10.92.

DIAGRAM NO. 2

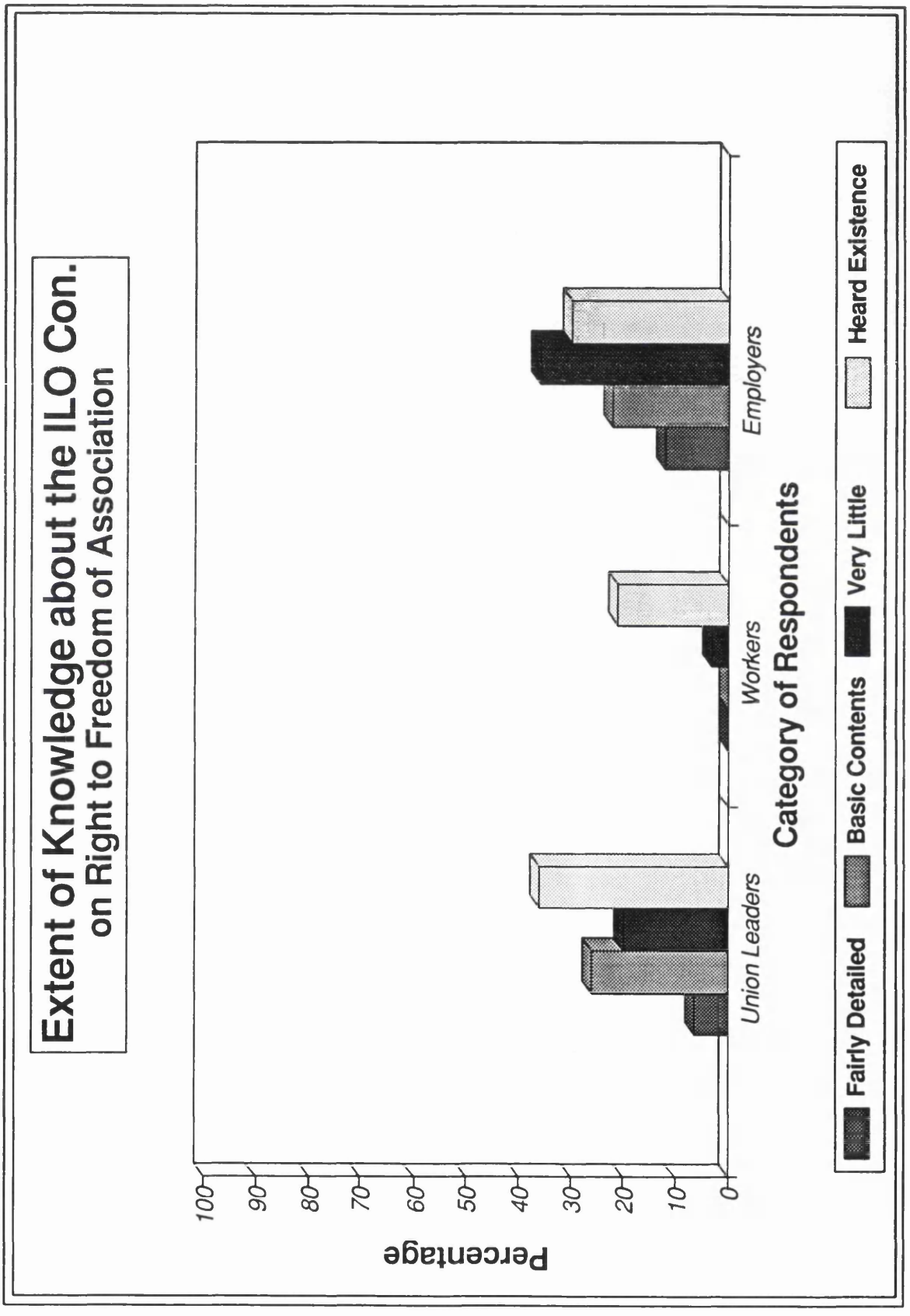
Extent of Knowledge about the ILO Con.
on Right to Freedom of Association
Percentage
100
90
80
70
60
50
40
30
20
10
0
Union Leaders
Workers
Employers
Category of Respondents
Fairly Detailed
Basic Contents
Very Little
Heard Existence

Table No. 3 shows that 88% of union leaders have knowledge about the existence of the ILO but from diagram No. 2 it is apparent that only 6% (3 out of 50) have a fairly detailed knowledge of the provisions of the Conventions, 26% (13 out of 50%) are aware of the basic contents, 20% (10 out of 50) very little, while 36% (18 out of 50) merely heard about the existence of the Conventions. It is of interest to note that of the 24% of workers who knew about the Conventions (see, table No. 3), none possessed fairly detailed knowledge or of the basic contents: 3% of workers admitted to very little knowledge while 21% had merely heard of the existence of the Conventions. This state of workers' knowledge is not a matter of surprise as one leader of a federation of trade union admitted:

> General workers have hardly any idea about the ILO and its Conventions for the fact is that the Conventions are not published in the local language and the leaders refer to the ILO only in some public lectures but do not discuss in details.[16]

The question arises as to whether it would make any difference if the texts of the Conventions were to be made available in the vernacular. According to one basic level union leader:

> Such efforts will not bring any positive result. To the workers who are faced with their day to day economic hardship - the availability of literature on the ILO in the vernacular will be of no practical use as their immediate real concern is to earn bread and butter rather than acquainting themselves with the international events.[17]

The union leaders' possible role in educating the workers about the right to

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[16] Personal interview dated 11.10.92. Translated from Bengali.

[17] Personal interview dated 26.10.92. Translated from Bengali.

freedom of association as enshrined in the ILO Conventions was depicted by one union leader. According to him:

> The financial constraints upon the unions coupled with unfavourable circumstances in running the union activities i.e., employers' anti-union attitude, lack of proper union office, workers' reluctance to pay union subscriptions etc., make it almost impossible for us to launch workers' education programmes. Thus, given the present circumstances we cannot play any positive role in communicating to the workers about the ILO Conventions on freedom of association nor it appears to be of any prime concern to them.[18]

All the employers unlike union leaders and workers know about the existence of the ILO Convention on freedom of association (see, table No. 3), but only 12% (6 out of 50) claimed to have fairly detailed knowledge while 22% (11 out of 50) are aware of the basic contents of the Conventions. 36% of employers (18 out of 50) have very little knowledge about the Conventions and on the other hand 30% (15 out of 50) merely have heard about the existence of the ILO Conventions on freedom of association.

The respondents who did not have any knowledge about the ILO Conventions, were requested to state their reasons for not knowing about the Conventions and their responses are presented below in table No. 5.

[18] Personal interview dated 18.9.29.

TABLE NO. 5

REASONS FOR NOT KNOWING ABOUT THE EXISTENCE OF THE ILO CONVENTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATION

REASONS FOR NOT KNOWING ABOUT THE ILO CONVENTIONS ON RIGHT TO FREEDOM OF ASSOCIATION	RESPONDENTS					
	UNION LEADERS		WORKERS		EMPLOYERS	
	No.	%	No.	%	No.	%
LACK OF EDUCATION	0	0	39	39	0	0
LACK OF INTEREST	0		21	21	0	0
NOBODY TOLD ME	6	12	16	16	0	0

From table No. 5 it appears that the 12% (6 out of 50) of union leaders who did not have any knowledge about the ILO Convention have all mentioned that they did not have knowledge because they were not told about the Conventions. It may be mentioned that all these respondents were the leaders of the basic level unions. One basic level union leader considered:

> The leaders of trade union federations to which they belong should tell them and the Government being a member of the ILO also incur some responsibilities to convey the message of the Conventions to the workers.[19]

Another basic level union leader suggested:

> The leaders of the national trade union federations who represent the workers at the ILO annual Conference should communicate to them about the outcome of the ILO Conference and describe what rights the workers are supposed to enjoy as stipulated by the ILO Conventions.[20]

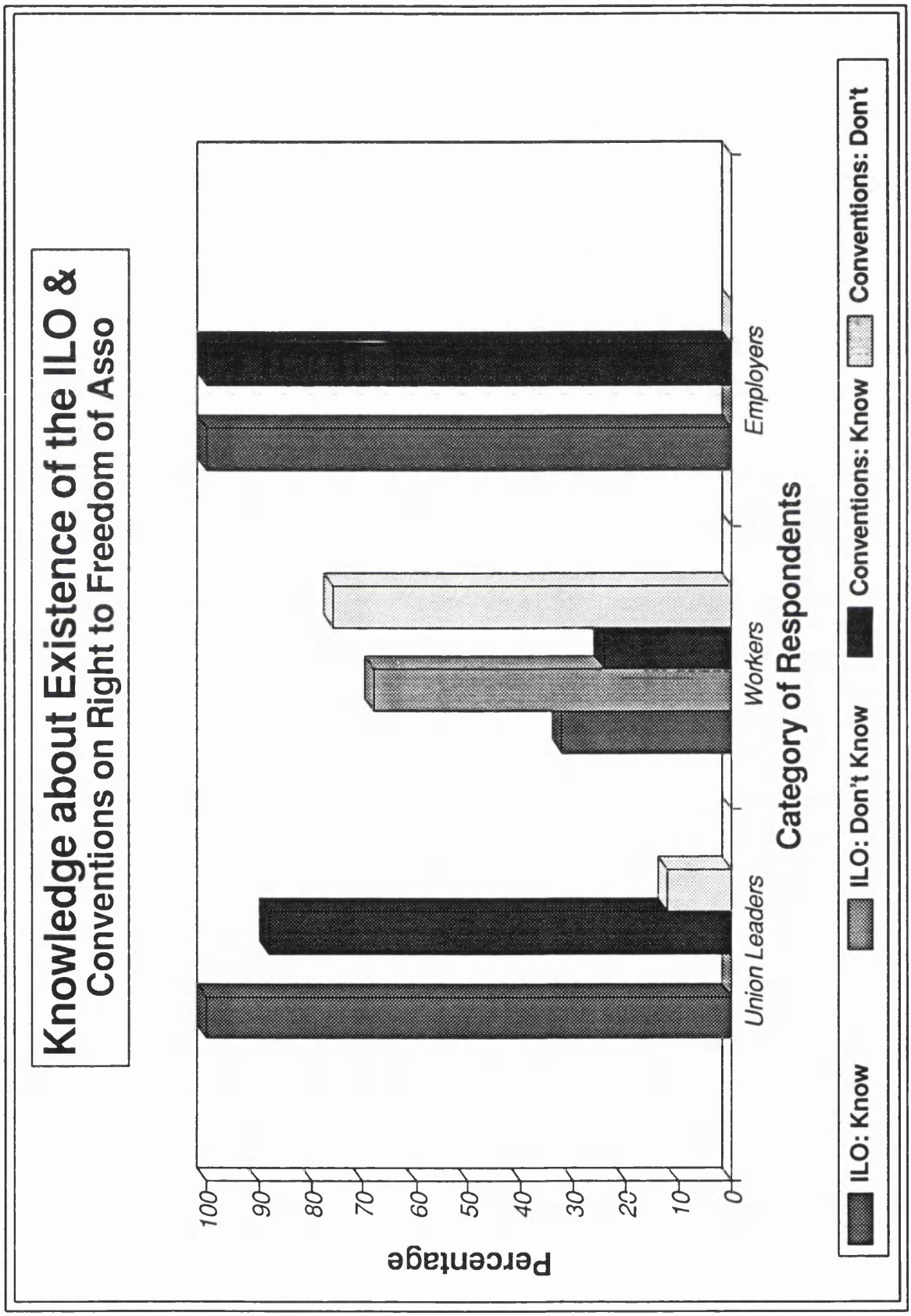
It is to be noted that none of the basic level union leaders mentioned lack of education as their reasons for not knowing about the ILO Conventions on

[19] Personal interview dated 17.10.92. Translated from Bengali.
[20] Personal interview dated 22.11.92. Translated from Bengali.

freedom of association. The workers on the other hand replied somewhat differently i.e., 39% suggested lack of education as their main reason for not knowing, while 21% lack of interest. However, like 12% of union leaders, 16% of workers' argument for not knowing about the Conventions was due to the fact that nobody told them about the existence of the Conventions. We have seen earlier that basic level union leaders who advanced the same reasoning held the leaders of national trade union federations responsible, but so far as the workers were concerned they primarily held their union leaders to be responsible.

In table No. 1 and table No. 3 respondents' knowledge about the existence of the ILO and the ILO Conventions on freedom of association have been presented respectively. The following diagram No. 3 delineates the comparative rate of the respondents' knowledge about them.

DIAGRAM NO. 3


Knowledge about Existence of the ILO &
Conventions on Right to Freedom of Asso
Percentage
100
90
80
70
60
50
40
30
20
10
0
Union Leaders
Workers
Employers
Category of Respondents
ILO: Know
ILO: Don't Know
Conventions: Know
Conventions: Don't

From the above diagram it is apparent that all the union leaders have knowledge about the existence of the ILO but all of them do not know about the existence of the Conventions. Though union leaders' response about the knowledge of the Conventions show quite a high percentage i.e., 88%, yet it is evident from the diagram No. 2 that the majority of them i.e., 36% merely heard about the existence of the Conventions, while another 20% have very little knowledge. The field investigation further revealed that out of eight Conventions which the ILO has adopted so far on freedom of association, only 3 union leaders knew of 4 Conventions i.e., Conventions Nos. 11, 87, 98 and 141. Another 2 union leaders suggested to know about 3 Conventions i.e., Convention Nos. 11, 87, 98, and all other union leaders knew about less than 3 or merely heard about the Conventions in general without having specific knowledge about any particular Convention. From diagram No. 3 it is also apparent that the rate of knowledge of workers about the ILO Conventions is also less than the ILO like that of the union leaders. However, the employers show an opposite picture as all of them know about the ILO and its Conventions on freedom of association. This appears to be due to the fact that all of them were educated enough to know about the existence of the ILO and its Conventions on freedom of association (see, diagram No. 1).

6.4.2 TESTING VIEWS ON THE EXTENT OF THE RIGHT TO ESTABLISH TRADE UNIONS AND THEIR FUNCTIONING

After inquiring about the ILO and its Conventions on freedom of association the respondents were asked to state their views on the extent of the right to establish trade unions and their functioning. Our findings in the previous section have revealed that many of the respondents were not aware about the existence of the ILO and its Conventions on freedom of association and among those who knew about the existence of the Conventions many of them were not acquainted with the substantive provisions of the Conventions or knew very little about them. Thus, in order to explore what the respondents generally thought about the right to trade unionism, they were asked to respond to a series of statements. The statements were: (a) "workers should have the right to establish trade unions"; (b) "workers should have the right to establish and join trade unions of their own choosing"; (c) "workers should have the right to establish trade unions without previous authorisation"; (d) "in order to establish trade unions workers should have the right to elect their representatives in full freedom"; (e) "trade unions should not be liable to be dissolved or suspended by administrative authority and (f) "trade unions should have the right to establish and join federations and confederations". These statements were framed on the basis of the provisions of the ILO Convention No. 87 dealing with the right to freedom of association. This was done with the object that on the one hand it would reflect respondents' own views about the extent of the

enjoyment of the right and on the other hand depict to what extent their views are in line with the ILO Convention No. 87. The findings of this investigation are presented below in table No. 6.

TABLE NO. 6

RESPONDENTS' RESPONSE TO THE STATEMENTS ON TRADE UNION RIGHTS

RESPONSE TO THE STATEMENTS:											
CATEGORY OF RESPONDENTS	NUMBER OF RESPONDENTS	RESPONSES									
		STRONGLY AGREE		AGREE		DISAGREE		STRONGLY DISAGREE		NO RESPONSE	
		No.	%	No.	%	No.	%	No.	%	No.	%
A) STATEMENT: WORKERS SHOULD HAVE THE RIGHT TO ESTABLISH TRADE UNIONS											
UNION LEADERS	50	50	100	0	0	0	0	0	0	0	0
WORKERS	100	100	100	0	0	0	0	0	0	0	0
EMPLOYERS	50	0	0	32	64	12	24	6	12	0	0
B) STATEMENT: WORKERS SHOULD HAVE THE RIGHT TO ESTABLISH TRADE UNIONS OF THEIR OWN CHOOSING											
UNION LEADERS	50	50	100	0	0	0	0	0	0	0	0
WORKERS	100	100	100	0	0	0	0	0	0	0	0
EMPLOYERS	50	0	0	32	64	0	0	0	0	18	36

Continued ...

C) STATEMENT: WORKERS SHOULD HAVE THE RIGHT TO ESTABLISH TRADE UNIONS WITHOUT PREVIOUS AUTHORISATION											
UNION LEADERS	50	49	98	0	0	1	2	0	0	0	0
WORKERS	100	10	10	51	51	39	39	0	0	0	0
EMPLOYERS	50	0	0	16	32	23	46	11	22	0	0
D) STATEMENT: WHILE ESTABLISHING TRADE UNIONS WORKERS SHOULD HAVE THE RIGHT TO ELECT THEIR REPRESENTATIVES IN FULL FREEDOM											
UNION LEADERS	50	50	100	0	0	0	0	0	0	0	0
WORKERS	100	100	100	0	0	0	0	0	0	0	0
EMPLOYERS	50	9	18	28	56	0	0	0	0	13	26
E) STATEMENT: TRADE UNIONS SHOULD NOT BE LIABLE TO BE DISSOLVED OR SUSPENDED BY ADMINISTRATIVE AUTHORITY											
UNION LEADERS	50	50	100	0	0	0	0	0	0	0	0
WORKERS	100	68	68	24	24	8	8	0	0	0	0
EMPLOYERS	50	0	0	12	24	17	34	21	42	0	0
F) STATEMENT: TRADE UNIONS SHOULD HAVE THE RIGHT TO ESTABLISH AND JOIN FEDERATIONS AND CONFEDERATIONS											
UNION LEADERS	50	50	100	0	0	0	0	0	0	0	0
WORKERS	100	58	58	33	33	o	0	0	0	9	9
EMPLOYERS	50	0	0	12	24	15	30	23	46	0	0

(A) Response to the statement : "workers should have the right to establish trade unions".

From table No. 6 it is evident that all the union leaders and workers interviewed strongly agreed that workers should have the right to establish trade unions. The expression of such strong commitment appeared to be due to the fact that all these respondents considered that, without the existence of some form of workers' organisation, the working class would be unable to defend its occupational interests and would be subject to the whim and mercy of the employers. The common arguments put forward by the union leaders and workers, advocating their right to establish trade unions were as follows: "to fight the arbitrariness of employers", "to safeguard and secure the rights of workers", "workers cannot solve their problems individually", "without an organisation one gets nothing" and "union is strength". These statements are a reflection of the reality that unions generally have to exist in a hostile environment and rely on the unity of the members to withstand pressures from the management and Government. Thus the general proposition was that an individual in isolation is powerless and unable to defend his interests effectively and that power lies in unity, association and collective action.

Unlike union leaders and workers, none of the employers strongly agreed that workers should have the right to establish trade unions. Nevertheless, 64% (32 out of 50) merely agreed. The main reasons for agreeing may be summarised as follows: some considered that the time has come for the workers

to look after themselves, others considered that, once unions are established, union leaders can solve many of the problems of the workers for which management would not be bothered, a few others said that the existence of trade unions help the functioning of industrial enterprises as the management need not talk to all workers but to the union representatives. Though the majority of the employers were in favour of the existence of trade unions, yet 24% (12 out of 50) of employers disagreed and 12% (6 out of 50) strongly disagreed on the basis that it should be the employers to look after their workers and not the union leaders as all resources are with the employers not the union leaders. According to many of them the establishment of Trade Unions creates an unhealthy atmosphere in industrial enterprises which often end up in a hostile relationships between management and unions as unions often put forward an ambitious charter of demands without considering the resources of the management.

These employers clearly expressed their scepticism about any positive role of Trade Unions in economic and industrial development and would prefer the absence of any kind of trade unions in their establishments. From this it appears that some employers have not changed their notion of anti-unionism, although 25 years have passed since the labour policy of 1969 was declared, which expressly criticised employers' attitude in this regard and offered the following explanation:

> The employers are generally first generation industrialists unappreciative of the role that motivated workers can play towards

higher productivity and profitability and have been hostile to the development of trade unions.[21]

However, it should be emphasised that only 36% of Employers expressed a negative attitude towards workers having the right to establish trade unions while majority, i.e., 64%, were in favour of it. Below we will see their response on the broader issues of trade union rights.

(B) Response to the statement : "workers should have the right to establish trade unions of their own choosing".

The responses of the union leaders and workers, as is evident in table No. 6, have been very positive as all the respondents in the sample strongly agreed that workers should have the right to establish trade unions of their own choosing. None of the worker respondents referred to the relevant provisions of the ILO Conventions to support their views, yet all of them regarded 'free choice' as one of the foundations of freedom of association. In the course of discussion it was conveyed to them that this right has been recognised by the ILO Convention No. 87. When reference to the relevant ILO Convention was made, it appeared that none of the workers knew about the existence of any such provision.[22] Amongst the union leaders in the research sample, only three respondents appeared to know about the provision of 'free choice' as embodied

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[21] See, Labour Policy, 1969.

[22] Although 24% of workers claimed to know about the existence of the ILO Conventions (see above, table No. 3, p. 255) but in view of their extent of knowledge as indicated in diagram No. 2 (see above, p. 258) such response could be expected.

in the ILO Convention No. 87.[23] All these respondents were the leaders of national federation of trade unions and had represented workers' delegate once or more at the annual International Labour Conference. None of the employers strongly agreed to the statement, though 64% (32 out of 50) merely agreed and 36% (18 out of 50) did not give any reply to the question. By answering 'agree' and not 'strongly agree' the employers showed their lower commitment to the statement in contrast to that of the union leaders and workers. The employers (i.e., 36%) who expressed the opinion that workers should not have the right to establish trade unions were the respondents who did not give any reply to the present statement. The main plea of non-response was that as they do not support the cause of establishment of unions so they need not give any reply to the statement that workers should have the right to establish trade unions of their own choosing. This argument advanced for non-response may not be logical enough but nevertheless depicts their anti-union attitudes.

(C) Response to the statement : "workers should have the right to establish trade unions without previous authorisation".

A majority of the respondents seemed unacquainted with the concept of 'previous authorisation' and replied only after it was explained to them. An overwhelming majority of union leaders i.e., 98% (49 out of 50) strongly agreed that workers should have the right to establish trade unions without previous

[23] This response sequences with diagram No. 2 (see above, p. 258) which shows that only 3 out of 50 union leaders claimed fairly detailed knowledge of the Conventions.

authorisation. Amongst the sample of trade union leaders only one union leader who is the president of a national Trade Union federation and who also once represented the workers' delegate at the ILC expressed a diametrically opposed view. According to him:

> In an ignorant, uneducated and underdeveloped society like us - we need some kind of previous authorisation. In a developed, educated and conscious society there need not be any kind of authorisation because they are more conscious about their rights, duties and obligations as citizens. The scenario in our country is different and as such the ILO concept of 'previous authorisation' is not applicable to us.[24]

The above view received remarkable support from the workers as 39% of workers disagreed with the statement. The main concern of these workers was that as they are not educated enough to understand the day to day affairs of trade unions and also their establishment and functioning so they would appreciate the intervention of the department of labour to police that necessary formalities are being complied with in establishing a trade union and as such support the registration procedure. Lack of trust on the union leaders also was a major factor for some workers to support the issue of 'previous authorisation'. When it was explained to them that by supporting the requirement of 'previous authorisation' they would limit their freedom to establish unions, one of the workers responded:

> We don't know what rights or freedoms we have got on trade unionism and our leaders never discuss these aspects with us.[25]

Another worker said:

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[24] Personal interview dated 27.9.92.

[25] Personal interview dated 15.10. 92. Translated from Bengali.

> We act upon the instructions of the union leaders and do what they ask us to do and as such right to freedom of association matters little to us.[26]

However 10% of workers shared the majority view of the union leaders that workers should have the right to establish trade unions without previous authorisation. These workers were educated to the secondary level and seemed to be more conversant with trade union affairs than those workers who favoured previous authorisation. The workers who did not strongly agree but merely agreed to the statement constituted the majority as 51% fell in this category. By not strongly agreeing, they have showed lower commitment to the statement. The majority of these respondents were doubtful on the issue of previous authorisation as they neither strongly agreed nor disagreed but agreed. The affirmative response of the workers on the statement cannot be argued to be due to the influence of the relevant provisions of the ILO Convention No. 87 as none of these respondents had specific knowledge about the existence of the Convention.

D) Response to the statement : "while establishing trade unions workers should have the right to elect their representatives in full freedom".

On the issue of election of representatives of trade unions, all the union leaders and workers strongly agreed with the statement. Thus the union leaders and workers in the sample unanimously held that the right of workers'

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[26] Personal interview dated 7.9.92. Translated from Bengali.

organisations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. On the other hand only 18% (9 out of 50) of employers strongly agreed and 56% (28 out of 50) agreed. 26% (13 out of 50) of employers abstained from answering the question. The employers who strongly agreed were all from the sample of respondents chosen from the Executive Committee of the Bangladesh Employers Association. These respondents were of the opinion that freedom of association implies the right of workers to elect their representatives in full freedom and thus if freedom of association is to mean anything, it must be accompanied with a full guarantee to elect representatives in full freedom.

(E) Response to the statement:"trade unions should not be liable to be dissolved or suspended by administrative authority".

Before presenting the response of the respondents it is necessary to state that the IRO, 1969, does not confer directly power on the administrative authorities to dissolve or suspend Trade Unions. It empowers the Registrar of Trade Unions to cancel registration of a Trade Union.[27] This provision of cancellation of registration by the Registrar of Trade Unions was understood by majority of respondents to be amounting to dissolution or suspension of unions by the administrative authority. That view is supported by the ILO as the

[27] See, Industrial Relations Ordinance, 1969, Section 10.

Committee on Freedom of Association in one case emphasised:

> The cancellation of registration of an organisation by Register of Trade Unions is tantamount to the suspension or dissolution of that organisation by administrative authority.[28]

In the line of this understanding all the union leaders and 68% of workers strongly agreed to the statement while 24% of workers agreed. To these respondents the power of cancelation of registration of unions by the Registrar of Trade Unions was seen as a serious impediment in exercising their right to freedom of association. The overwhelming view was that suspension of Trade Union organisations by the administrative authority constitutes a serious restriction of the workers' organisations to elect their representatives in full freedom and to organise their activities.

While all the union leaders and a majority of the workers had expressed a positive response to the statement, 8% of workers disagreed with the statement. These workers asserted that they understood little of the day to day affairs of trade unions either due to their lack of education or interest or that their union leaders did not want them to know. Therefore, they were not in a position to assess the role of union leaders' in running the union and union affairs as a whole. Hence, for the purpose of healthy trade unionism, they would welcome the role of administrative authority having the power to cancel registration of unions if a particular union deviates from its actual role and fails to comply the law of the land. It did not seem that they were opposed to the

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[28] See, ILO, Committee on Freedom of Association, 230th report, Case No. 1189, para 686.

right to freedom of association and the response was the result of their own ignorance of Trade Union affairs and scepticism about the role of union leaders.

(F) Response to the statement: "trade unions should have the right to establish and join federations and confederations".

Table No. 6 shows that all the trade union leaders and a majority of workers i.e., 58% strongly agreed while 33% agreed to the statement. The main arguments in support of their contentions were that the workers of any single industry or factory can no longer launch a successful trade union movement all by themselves, because of Governmental interference on the one hand and centralisation of the movement at the national level on the other hand. In order to fight for better terms and wages, the workers of all industries and factories are required to act unitedly. So there is an inevitable necessity for a greater unity of the working class under the unified leadership of national level federations of trade unions.

It should not, however, be construed to mean that the basic level unions are of no avail. Rather a paradox emerges: while the basic unions tend to depend upon national federations for leadership, the national federations on their end, however, cannot initiate any movement without the active co-operation of the basic unions. It was quite clear to these respondents that in order to defend the interests of their members more effectively, the basic-level unions must have the right to form and join federations and confederations of their choosing.

Some of the respondents also asserted that if freedom of association is to mean anything, trade union federations and confederations must also enjoy the rights accorded to basic level unions including the right to bargain collectively.

6.4.3 TESTING AWARENESS AND OPINION ABOUT THE IRO, 1969, DEALING WITH THE RIGHT TO FREEDOM OF ASSOCIATION

Having investigated respondents' awareness about the ILO, its Conventions on freedom of association and their views on the extent of the right to establish trade unions and their functioning, the next step was to test their awareness about the existence of the IRO, 1969, dealing with the right to freedom of association and their level of satisfaction with the legislative provisions. Respondents' awareness about the provisions of the IRO, 1969, on the right to freedom of association is shown below in table No. 7.

TABLE NO. 7

AWARENESS ABOUT EXISTENCE OF THE PROVISIONS OF THE IRO 1969 ON THE RIGHT TO FREEDOM OF ASSOCIATION

ARE YOU AWARE THAT THE IRO, 1969 CONTAINS PROVISIONS ON RIGHT TO FREEDOM OF ASSOCIATION ?		RESPONSES			
		YES		NO	
CATEGORY OF RESPONDENTS	NUMBER OF RESPONDENTS	No.	%	No.	%
UNION LEADERS	50	50	100	0	0
WORKERS	100	62	62	38	38
EMPLOYERS	50	50	100	0	0

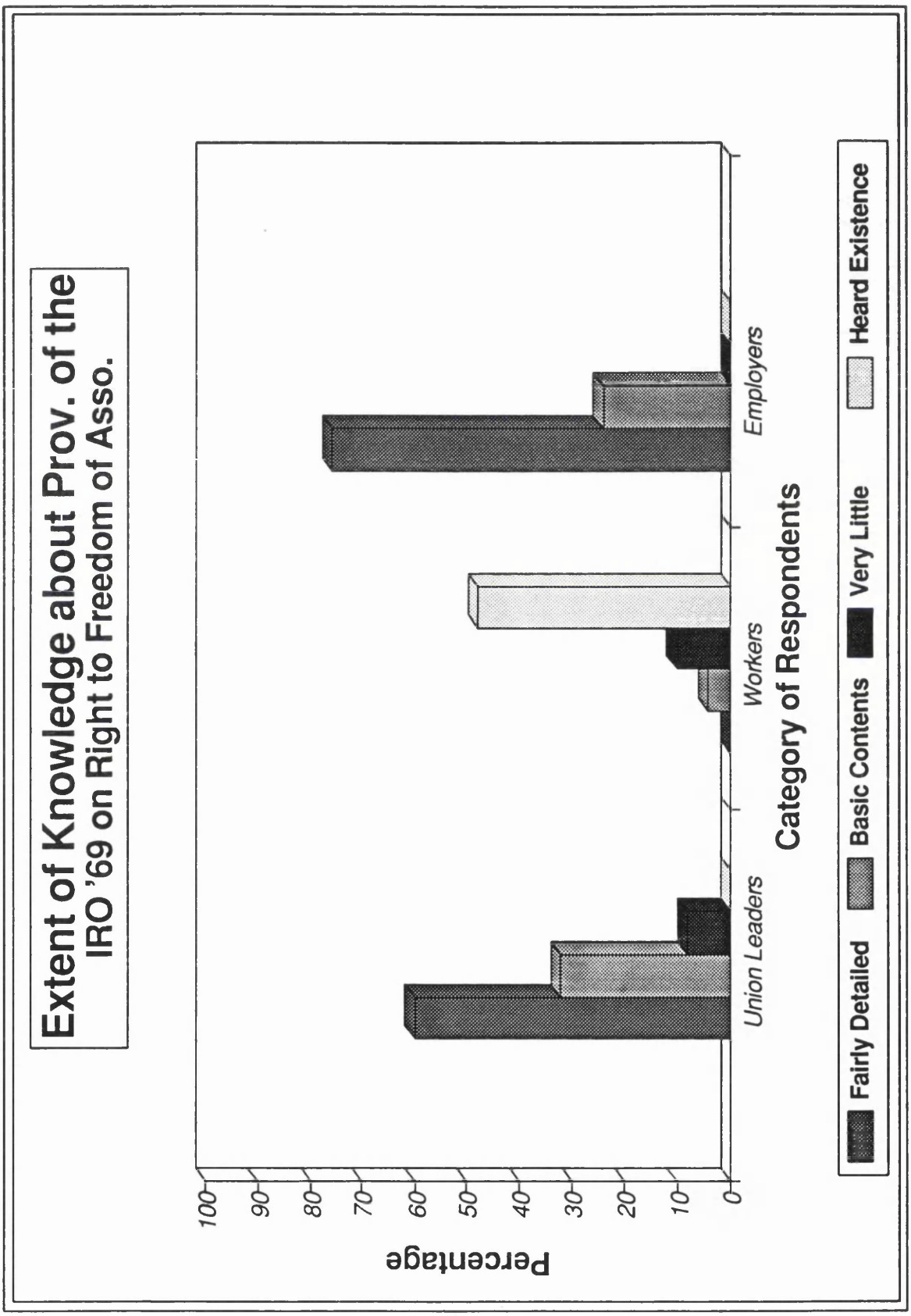
It appears from table No. 7 that all the union leaders and employers are

aware about the existence of the provisions of the right to freedom of association as provided in the IRO, 1969. So far as the workers are concerned, 62% have such knowledge and 38% did not. The question posed to the respondents which led to the tabulation of table No. 7 was of a general nature. The object was to find out merely the awareness of the respondents about the existence of the domestic legislation dealing with freedom of association. Thus, at this juncture it should not be assumed that the respondents who replied in affirmative had detailed knowledge about the provisions of the IRO, 1969.[29]

Respondents who knew about the existence of the provisions of the IRO, 1969, on the right to freedom of association were further requested to state their extent of knowledge and the findings of this investigation are shown in the following diagram No. 4.

[29] For respondents' extent of knowledge about the provisions of the IRO, 1969, see below, Diagram No. 4, p. 280.

DIAGRAM NO. 4


Extent of Knowledge about Prov. of the
IRO '69 on Right to Freedom of Asso.
Percentage
100
90
80
70
60
50
40
30
20
10
0
Union Leaders
Workers
Employers
Category of Respondents
Fairly Detailed
Basic Contents
Very Little
Heard Existence

It appears from table No. 7 that all the union leaders have knowledge about the provisions of the IRO, 1969, on the right to freedom of association but diagram No. 4 shows that only 60% (30 out of 50) have fairly detailed knowledge, 32% (16 out of 50) basic contents and 8% (4 out of 50) have very little knowledge. Though 60% of union leaders have fairly detailed knowledge about the provisions of the IRO, 1969, on right to freedom of association but none of the workers claimed to have fairly detailed knowledge. Only 4% answered to have knowledge about the basic contents, 10% very little while the majority of the workers i.e., 48% had merely heard about the existence of such provisions. From table No. 7 it is apparent that all the employers unlike workers are aware of the provisions of the IRO, 1969, and diagram No. 4 shows that 76% (38 out of 50) claimed to have fairly detailed knowledge and the remaining 24% (12 out of 50) knew about the basic contents.

The workers who did not have any knowledge about the provisions of the IRO, 1969 (i.e., 38% as has been indicated in table No. 7) were requested to state the reasons for their ignorance. The responses of these respondents were: 14% replied lack of education as main reason while 24% considered that they did not know because nobody told them about it. When asked whom did they think should have told them, all the respondents asserted that this should have been communicated to them by their union leaders as they do not have the required level of education to acquaint themselves with the knowledge of the provisions of the IRO, 1969, dealing with the right to freedom of association.

The respondents those who admitted to know about the provisions of the IRO, 1969, on right to freedom of association were requested to state if they were satisfied with the provisions. The findings of this investigation are given below in table No. 8.

TABLE NO. 8

SATISFACTION ABOUT THE PROVISIONS OF THE IRO, 1969, ON THE RIGHT TO FREEDOM OF ASSOCIATION

ARE YOU SATISFIED WITH THE PROVISIONS OF IRO, 1969, ON RIGHT TO FREEDOM OF ASSOCIATION ?	RESPONSES					
	YES		NO		NO RESPONSE	
CATEGORY OF RESPONDENTS	No.	%	No.	%	No.	%
UNION LEADERS	42	84	8	16	0	0
WORKERS	6	6	0	0	56	56
EMPLOYERS	34	68	0	0	16	32

The above table shows that 84% (42 out of 50) of union leaders are satisfied with the legislative provisions on freedom of association and 16% (8 out of 50) of union leaders are not satisfied. The workers' response to the question was that only 6% expressed their satisfaction while 56% of workers did not give any reply to the question so their views have been shown as no response in table No. 8. Such non-response appears to have been due to the fact that 48% of workers (as shown in diagram No. 4) had merely heard about the existence of the provisions of the IRO, 1969, on the right to freedom of association and thus were unable to express any view on the issue. It appears from table No. 8 that 68% (34 out of 50) of employers expressed their

satisfaction while 32% (16 out of 50) did not reply to the question and their responses have been indicated as no response in the table No. 8.

It is evident from the above table that a minority of union leaders i.e., 16% have expressed their dissatisfaction about the provisions on freedom of associations as provided in the IRO 1969. The various reasons of dissatisfaction as advanced by these respondents are: (a) the prohibition on outsiders to become union executives at the basic level unions; (b) the requirement of 30% workers to form a union in any establishment; (c) the restriction on number of unions i.e., no more than three unions to exist in one establishment; (d) the requirement of compulsory registration of unions and (e) the power of the Registrar to cancel registration of unions.

When these respondents were asked why they considered it necessary to have an outsider union leader in the management, the most common reply was the fear of victimisation. Other reasons advanced were: the high degree of illiteracy amongst the workers; that, being subordinates, the workers on the executive could not discuss their grievances freely with the management. Considering 30% of workers' support in the establishment of a union as high percentage and supporting unlimited multiplicity of unions, these respondents specified that the formation of a union should be left to the workers to decide and as such the legislation should not prescribe the maximum number of unions to exist in one establishment which in other words limits the workers of their

right to form associations. In this context three union leaders[30] recalled the ILO Convention No. 87 which advocates full freedom for formation of associations.

Contrary to the above views, an overwhelming majority of the union leaders (i.e., 84%) and all the workers who expressed their opinion on the issue of satisfaction on domestic legislation (i.e., 6%) were of the opinion that certain legislative regulations are necessary for proper functioning of the unions. Supporting the prohibition of outsiders' participation at the basic level union, one basic level union leader argued:

> The outsider leadership is responsible for the slow growth of insider leadership thus preventing trade unionism in the country from being self-reliant and truly democratic.[31]

Another basic level union leader said:

> The outsiders are extremely influential in the field of industrial relations and through this influence and power they try to capture the trade unions for their own benefit and hence, they act as a barrier to stop the internal supply of trade union leadership.[32]

The obvious criticism by the employers against the outsiders were, to quote one employer:

> They are not from the rank and file of the workers. They have different life styles and have little connection with the workers they lead. They lack practical knowledge about the detailed procedures in the industry or the difficulties of the workers or of the management.[33]

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[30] These respondents claimed to have fairly detailed knowledge about the provisions of the Conventions on freedom of association (see above, diagram No. 2 at p. 258).

[31] Personal interview dated 2.10.92. Translated from Bengali.

[32] Personal interview dated 15.9.92. Translated from Bengali.

[33] Personal interview dated 28.9.92.

The other criticism against outsiders is that they are political men acting as the agents of a particular party. Thus they bring politics into unions, exploit unions for political purposes and subordinate union loyalty to political loyalty. Therefore, it was often suggested by the employers that the dependence of unions on outsiders as their executives is one of the many causes of unhealthy rivalries in the labour movement. Thus, it was pointed out one by employer:

> Politically motivated outside trade union leaders want to establish unions of their own with a view to increasing their influence.[34]

Historically, the unwillingness of the employer to accept the ordinary worker as a fit person with whom he might sit across the table for negotiation made the outsiders a virtually indispensable category of labour leaders in the trade unions of the Indian sub-continent.[35] That role was greatly reinforced by an elaborate set of rules and regulations and the role of Government agencies. The proceedings, for example, were conducted in English which served to exclude many workers and promote the growth of intellectual outsiders. Another important factor promoting the outsiders in the trade union movement in the country was the links between trade union growth and the organised independence movement against the British colonial rulers. The nation's struggles for political freedom brought together many organisations irrespective of different and conflicting views. Hence, the organising and political

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[34] Personal interview dated 19.11.92.

[35] See, Badiuzzaman, M., The Growth and Development of Trade Unionism in Bangladesh: 1947-1986, Unpublished Ph.D. Thesis, 1987, University of Keele, England, p. 389.

consciousness of workers were regarded as vital factor and in some cases, inseparable from the united movement for independence.[36]

Besides these historical factors the hostile attitude of the employers towards the formations of Trade Unions has restricted the supply of internal leadership. Victimisation is the main consequence of the hostile attitude of the management in dealing with the Trade Unions. The earliest survey on labour problems carried out by the ILO Mission in the then Pakistan found that the most common reason for the need of the outsiders, advanced by both trade union officials and workers, was the fear of victimisation felt by employees.[37] Considering the development of Trade Unions in the country, the Mission suggested:

> However necessary these outsiders may have been in the past, the mission feels that if the fear of victimisation can be removed there are many workers of sufficient intelligence and education who with some specialised training would be quite capable of running trade unions.[38]

The field investigation showed that the workers and union leaders want protection against victimisation by the employers rather than allowing outsiders as a substitute for leadership.

An overwhelming support for the maximum of three unions to exist in one establishment was expressed by union leaders and workers who expressed their satisfaction about the provision of the IRO, 1969. It was pointed out by

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[36] Ibid. 399.

[37] ILO, Report to the Government of Pakistan on a Comprehensive Labour Survey, Geneva 1953, pp.131-132.

[38] Ibid, p.133.

some of the respondents that if there are several unions in the same establishment trying to cater for the same set of employees, it results in undue rivalries and jealousies ultimately causing weak unions. On this point the ILO Mission in the then Pakistan commented:

> While the trade union movement is poorly developed, it is paradoxical that there are far too many registered unions in some industries; there activities overlap and disunity prevails.[39]

The Mission rightly pointed out the problem of multiplicity of unions because it was extremely easy to form and register a union under Sections 4 and 8 of the Trade Unions Act, 1926 as any seven members could form a union. On the problems of multiplicity of unions one union leader pointed out:

> The most important weakness of trade unionism in Bangladesh is the very deep division of trade unions which exists amongst the different factions. Because of this division it is difficult to have a strong trade union organisation in one establishment which can claim support of the majority of the workers.[40]

The difference of opinion and ideology amongst unions in one establishment could have been considered healthy for trade union activity if it had operated in a democratic framework. Unfortunately in most cases this infighting crosses all norms of democratic behaviour and even develops into armed conflicts. One union leader rightly summarised:

> After one group or union wins the right of being collective bargaining agent it takes an extreme position against those who have lost. They may be physically prevented from entering the factory premises. In some extreme case this rivalry has even led to the murder of the leader

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[39] Ibid, p.130.

[40] Personal interview dated 25.11.92.

of rival group.[41]

Thus, one of the major problems with which the Trade Unions face is the multiplicity of unions at the enterprise level. In order to combat the adverse effect of this multiplicity, the Government has introduced the concept of collective bargaining agent and fixed the maximum number of trade unions to exist in one establishment which the field survey reveals is supported by the majority of the union leaders and workers. This prompts us to question how far the provisions of the ILO Conventions and the suggestions of the ILO supervisory bodies to bring the domestic law in harmony with the ILO Conventions are relevant in the context of Bangladesh.

6.4.4 TESTING ATTITUDES TOWARDS THE ILO AND ITS CONVENTIONS ON FREEDOM OF ASSOCIATION

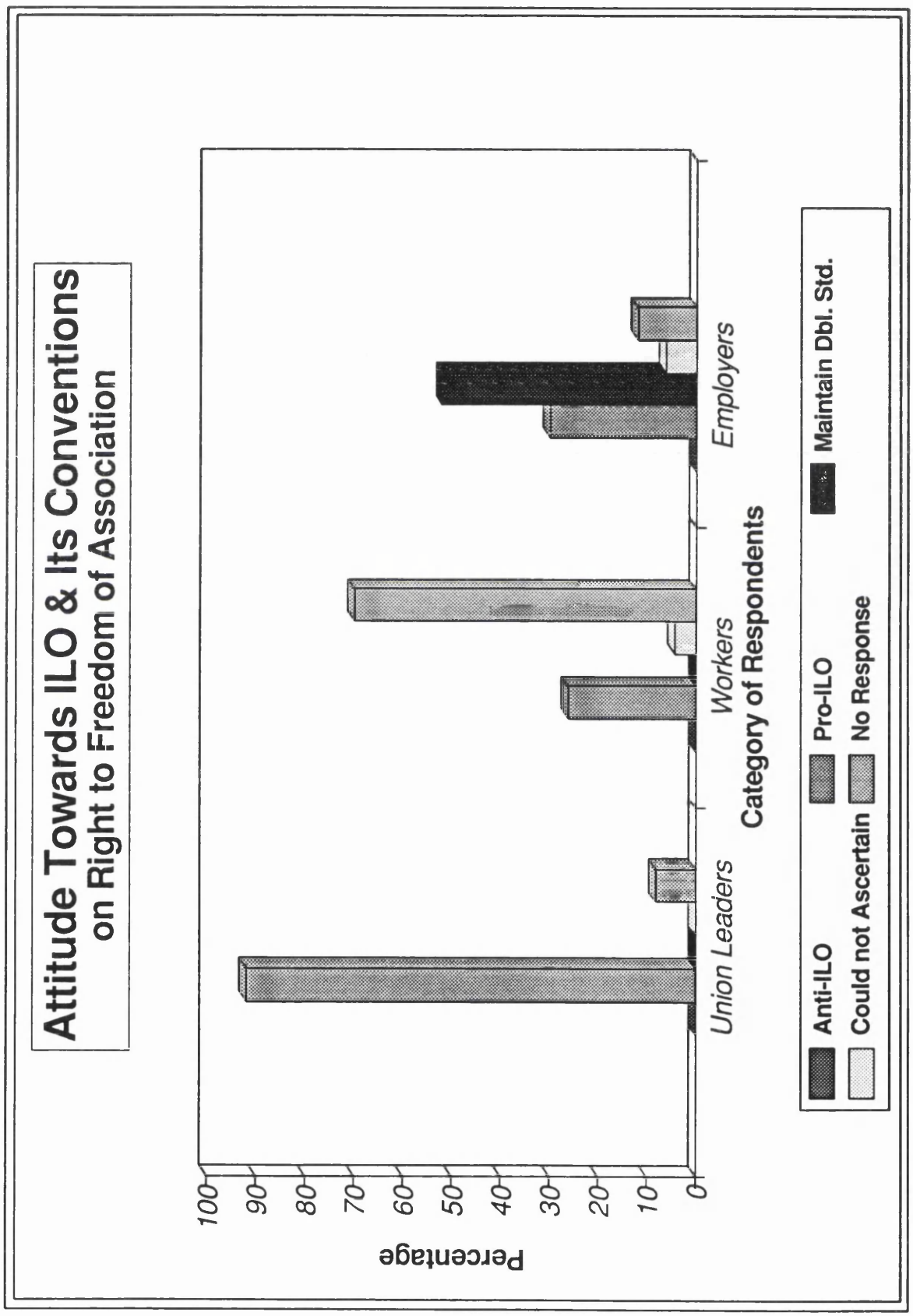
The investigation to find out the attitudes of the respondents in the sample about the ILO and its Conventions on freedom of association in Bangladesh was carried out as a logical follow-up after having inquired their knowledge about the ILO, its Conventions on freedom of association and their opinion on the extent of the right to establish Trade Unions. The technique adopted to test the attitude of the respondents was two fold: first, all the categories of respondents were requested to state their own attitude and the second involved inquiring about the perception by one category of respondents

[41] Personal interview dated 11.10.92.

of the attitude of the other category of respondents in the sample.

Respondents' own attitude about the ILO and its Conventions on the right to freedom of association is presented below in diagram No. 5.

DIAGRAM NO. 5


Attitude Towards ILO & Its Conventions
on Right to Freedom of Association
Percentage
100
90
80
70
60
50
40
30
20
10
0
Union Leaders
Workers
Employers
Category of Respondents
Anti-ILO
Pro-ILO
Maintain Dbl. Std.
Could not Ascertain
No Response

From diagram No. 5 it is evident that not a single respondent from any of the categories expressed an anti-ILO attitude whereas 92% (46 out of 50) of union leaders, 26% of workers and 30% (15 out of 50) of employers expressed a pro-ILO attitude. No matter to what extent the union leaders and workers knew about the activities of the ILO and the contents of its various Conventions, they were under the impression that the organisation has been established for the welfare of labour i.e., ensuring and advocating their rights. On the basis of this assumption they exhibited their pro-ILO attitude. To quote one union leader:

> Union leaders and workers in general consider that the ILO standards are generally pro-workers and these may help them in real terms as guidelines in furthering the enjoyment of their rights.[42]

On the other hand one employer while expressing his pro-ILO attitude said:

> Though the ILO has been established primarily for the interest of labour but nevertheless it serves the interest of everybody in the country including the employers. Without a harmonious relationship between the two partners of production the economy of a country can not prosper.[43]

52% (26 out of 50) of employers admitted that they maintain double standard with regard to the ILO and its Conventions on freedom of association. All these employers were requested to state the reasons for their answer but surprisingly enough none of them advanced any argument in support of their views and decided not to comment on the issue. As one would expect, none of the union leaders and workers expressed to be maintaining double standard. However, 4%

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[42] Personal interview dated 21.9.92.

[43] Personal interview dated 29.10.92.

workers and 6% (3 out of 50) of union leaders could not ascertain their attitude whereas majority of the workers i.e., 70% did not reply to the question. The non-response of the workers appears to be due to the fact that they had virtually no idea about the ILO[44] and the Conventions on freedom of association.[45] It was apparent from their responses that the establishment of the ILO and the existence of the Conventions was virtually of no significance to them. It made no difference to them that the ILO exists and that there are certain Conventions which advocates for their right of association. However, 8% (4 out of 50) of union leaders[46] and 12% (6 out of 50) of employers[47] did not reply to this question as they admitted to be lacking sufficient knowledge about the ILO Conventions on freedom of association to express any opinion.

Having investigated all the respondents' own attitude about the ILO and the Conventions on freedom of association, each category of respondents were requested to state their own views about the attitude of the other categories of respondents and of the Government. The findings of this investigation are presented below in tables Nos. 9, 10 and 11.

Union leaders' views about the attitude of workers, employers and

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[44] See above, table No. 1 at p. 252.

[45] See above, table No. 3 at p. 255.

[46] Such response could be expected as these respondents were amongst the 36% of union leaders who admitted to have merely heard about the existence of the Conventions (see above, diagram No. 2, at p. 258)

[47] These respondents were amongst the 30% of employers who admitted to have merely heard about the existence of the Conventions (see above, diagram No. 2)

Government towards the ILO and its Conventions on freedom of association are shown below in table No. 9.

TABLE NO. 9

ATTITUDE OF WORKERS, EMPLOYERS AND GOVERNMENT TOWARDS THE ILO AND ITS CONVENTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATION: UNION LEADERS' PERSPECTIVE

ATTITUDE OF WORKERS, EMPLOYERS AND GOVERNMENT TOWARDS THE ILO AND ITS CONVENTIONS ON RIGHT TO FREEDOM OF ASSOCIATION	UNION LEADERS' PERSPECTIVE					
	WORKERS		EMPLOYERS		GOVERNMENT	
	No.	%	No.	%	No.	%
ANTI-ILO	0	0	17	34	6	12
PRO-ILO	41	82	7	14	8	16
MAINTAIN DOUBLE STANDARD	0	0	23	46	36	72
COULD NOT ASCERTAIN	5	10	3	6	0	0
NO RESPONSE	4	8	0	0	0	0

It appears from table No. 9 that 82% (41 out of 50) of union leaders think that workers hold pro-ILO attitude, while 10% (5 out of 50) could not ascertain and another 8% (4 out of 50) did not reply to the question. Respondents who could not ascertain workers' attitude and those who did not give any reply asserted that workers in general have little idea about the ILO and its Conventions and therefore it was difficult for them to assess their attitudes. However, some of them expressed the view on the assumption that if the workers were conversant about the ILO and its Conventions then they would

have thought that workers would be holding a pro-ILO view as they consider that the ILO has been established mainly for the promotion of workers' rights.

The view of union leaders on employers' attitudes was that 34% (17 out of 50) thought employers hold anti-ILO attitudes and 46% (23 out of 50) maintain double standard. Union leaders who said that employers hold anti-ILO attitudes did not advance any specific argument in support of their perceptions. The majority of them were generally of the opinion that employers are opposed to the concept of freedom of association as specified in the ILO Conventions and create pressures on the Government to restrict and limit the exercise of the right to freedom of association. Some of the union leaders advanced the view that employers theoretically accept the concept of freedom of association but do not feel encouraged to negotiate with the trade unions specially in matters of collective bargaining. It was argued by one union leader:

> Employers support the right to freedom of association only to that extent which satisfy their interests and oppose implementation of other aspects of the right which would go against their interests.[48]

Further it was generally argued by some of the union leaders that apparently many employers accept that workers should have the right to freedom of association but in practice give no cooperation in the formation of Trade Unions but rather use their influence to frustrate the activities of the unions. However, 6% (3 out of 50) of union leaders could not ascertain employers' attitude. With regard to Government, 72%, (36 out of 50) of union leaders said that

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[48] Personal interview dated 8.10.92.

Government maintains double standard while 12% (6 out of 50) took the view that Government's attitude is anti-ILO and another 16% (8 out of 50) reported that Government hold pro-ILO attitude.

Workers' views about the attitude of the employers, union leaders and Government towards the ILO and its Conventions on freedom of association are shown below in table No. 10.

TABLE NO. 10

ATTITUDE OF EMPLOYERS, UNION LEADERS AND GOVERNMENT TOWARDS THE ILO AND ITS CONVENTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATION: WORKERS' PERSPECTIVE

ATTITUDE OF EMPLOYERS, UNION LEADERS AND GOVERNMENT TOWARDS THE ILO AND ITS CONVENTIONS ON RIGHT TO FREEDOM OF ASSOCIATION	WORKERS' PERSPECTIVE					
	EMPLOYERS		UNION LEADERS		GOVERNMENT	
	No.	%	No.	%	No.	%
ANTI-ILO	12	12	0	0	10	10
PRO-ILO	0	0	24	24	5	5
MAINTAIN DOUBLE STANDARD	0	0	0	0	5	5
COULD NOT ASCERTAIN	12	12	0	0	4	4
NO RESPONSE	76	76	76	76	76	76

Table No. 10 shows that 76% of workers indicated no response. This non-response is explained by the ignorance of these workers about the ILO and its Conventions on freedom of association as has been evident in table No. 1 and 2 (see above, p. 252 and p. 253). However, the remaining 24% of workers

who expressed their views, have all indicated that union leaders have a pro-ILO attitude. Regarding employers' attitude about the ILO and its Conventions on freedom of association 12% of workers have said that employers hold anti-ILO attitude while another 12% could not ascertain employers' attitude. Government's attitude as perceived by the workers were as follows: 10% thought anti-ILO, 5% pro-ILO, 5% maintain double standard and 4% could not ascertain. None of these workers advanced any argument in support of their perceptions.

Employers' views about the attitude of union leaders, workers and Government about the ILO and its Conventions on freedom of association are shown below in table No. 11.

TABLE NO. 11

ATTITUDE OF UNION LEADERS, WORKERS AND GOVERNMENT TOWARDS THE ILO AND ITS CONVENTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATION: EMPLOYERS' PERSPECTIVE

ATTITUDE OF UNION LEADERS, WORKERS AND GOVERNMENT TOWARDS THE ILO AND ITS CONVENTIONS ON RIGHT TO FREEDOM OF ASSOCIATION	EMPLOYERS' PERSPECTIVE					
	UNION LEADERS		WORKERS		GOVERNMENT	
	No.	%	No.	%	No.	%
ANTI-ILO	0	0	0	0	0	0
PRO-ILO	50	100	31	62	29	58
MAINTAIN DOUBLE STANDARD	0	0	0	0	17	34
COULD NOT ASCERTAIN	0	0	19	38	4	8
NO RESPONSE	0	0	0	0	0	0

It appears from table No. 11 that none of the employers in the sample considered that union leaders, workers and the Government hold anti-ILO attitudes and all of them expressed the view that union leaders hold pro-ILO attitudes. Regarding workers' attitude, 62% (31 out of 50) of employers replied to be pro-ILO and 38% (19 out of 50) could not ascertain. 58% (29 out of 50) of employers took the view that Government's attitude is pro-ILO while 34% (17 out of 50) considered that Government maintain double standard and another 8% (4 out of 50) could not ascertain. One employer emphasised:

> The Government being a member of the ILO need to show pro-ILO attitude but in many cases rightly maintain that certain aspects of one Convention or other is more suitable for developed countries and are not the actual concern of the workers of Bangladesh.[49]

The field investigation on the attitudes towards the ILO and its Conventions, however, on the whole has shown that an overwhelming majority of the respondents hold pro-ILO views.

6.5 SUMMING UP

In this chapter, following the method of quantitative analysis and descriptive statistics - the awareness, opinion, attitude and views of the respondents in the sample on various issues i.e., the ILO, the ILO Conventions on freedom of association, and the domestic laws on freedom of association, have been presented so as to indicate the impact of the ILO Conventions on freedom of association upon the beneficiaries of the right.

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[49] Personal interview dated 15.11.92.

The survey shows that a majority of the workers are not aware of the ILO and its Conventions on freedom of association (see, tables Nos.1 and 2). All these workers possess primary level of education (see, diagram No. 1) and lack of education was given by the majority of them as a reason for not knowing about the ILO Conventions on freedom of association (see, table No. 5). On the other hand employers and union leaders having possessed better education (see, diagram No. 1) than the workers, know about the existence of the ILO and its Conventions on freedom of association. Educational qualification may therefore be considered to be an important variable in this regard. It is more so as we see that majority of employers and union leaders have given academic exercise as their source of knowledge (see, tables Nos. 2 and 4).

The knowledge of union leaders about the existence of the ILO and its Conventions on freedom of association apparently exhibits a positive indication. Awareness of the substantive provisions of the Conventions enables them to compare and contrast the rights as provided in domestic legislation with that of the international standards. But practically this has not been the case as the field investigation shows that majority of them either merely heard about the existence of the Conventions or knew very little about the provisions of the Conventions (see, diagram No. 2) and were not in a position to be able to compare and contrast the domestic law with that of the ILO Conventions. Further, the workers provided a rather negative scenario as majority of workers i.e. 76% (see, table No. 3) had no idea about the existence of the Conventions.

From the above data it can be concluded that the existence of the Conventions has failed to exert any significant influence amongst the majority of the union leaders and workers. Thus, there is a need to create more awareness of the existence of the Conventions and of their provisions amongst the workers and union leaders if the provisions of the Conventions are to play an effective role in the promotion of the workers' right to freedom of association.

However, respondents' awareness of the existence of the IRO, 1969 (see, table No. 7) and their extent of knowledge of the provisions of the IRO, 1969, on freedom of association (see, diagram No. 4) appears to be satisfactory considering their level of education (see, diagram No. 1). The majority of the union leaders' satisfaction (i.e., 84%) on the provisions of the IRO, 1969, (see, table No. 8) clearly indicates that the rights as detailed in the IRO have not fallen short of their expectations. In this situation, it is suggested that a detailed knowledge of the union leaders and workers about the ILO Conventions, coupled with their pro-ILO attitude (see, diagram No. 5) may play may an effective role as they will be able to demand and launch movement towards realisation of the rights further more in line with the ILO Conventions which they would consider necessary. This would lead to the creation of public opinion and thereby subject the Government to moral pressure to comply with its international commitment to bring the domestic laws further in conformity with that of the ILO standards.

Whatever be the extent of knowledge of the union leaders and workers

about the ILO Conventions on freedom of association, they were requested to give their views on various aspects of the extent of the right to exercise freedom of association. Our findings in table No. 6 show that the respondents in the sample of workers and union leaders overwhelmingly replied positively. Thus, they have *inter alia* indicated that workers should have the right to establish trade unions of their own choosing; that they should have the right to establish trade unions without previous authorisation and should have the right to elect their representatives in full freedom. But at the same time a majority of the union leaders (i.e., 84%, see, table No. 8) and of those workers who expressed their satisfaction about the provisions of the IRO, 1969, have on the other hand favoured the prohibition of outsiders from becoming union executives and the regulation of multiplicity of unions in the interest of healthy growth of trade unions in the country.

Hence, it appears that even though the respondents agree in principle that the workers should have unfettered right of exercise of right of association, yet in view of the circumstances prevailing in local industrial relations they support the restrictive provisions as provided in the IRO, 1969. This inevitably raises question about the prospect of having as the ILO advocates, universality of standards in a socially diverse world. Further it is apparent that some aspects of the right of association as specified in the Conventions and upheld by the supervisory bodies are not the actual concern of the workers of Bangladesh and as such have little relevance in the context of Bangladesh.

CHAPTER 7

CONCLUSIONS

This thesis has been concerned with an examination of the impact of international labour standards on freedom of association in Bangladesh. An account has been given of the legislative developments since the establishment of the ILO because, as detailed in chapter 2, the territory now comprising Bangladesh has been a member of the ILO since the establishment of the organisation in 1919. At that juncture, as has been shown in chapter 3, the status of right of association was in a state of confusion. There was neither any legal bar in the formation of associations nor did the workers have any positive guarantee of the exercise of the right of association but were subject to the restrictive provisions of the criminal and civil law. In such a situation, the establishment of the ILO had an important bearing on the formation of workers' associations. The All India Trade Union Congress, which came into existence in 1920, was founded not so much to coordinate trade union activities in the country at that period, but mainly in order to elect workers' representatives for nomination by the Government[1] for participation in the International Labour

[1] In this chapter the use of the expression Government shall denote the Government of India, Pakistan and Bangladesh as appropriate. 'India' refers to undivided India under the British Empire until August 1947.

Conference at Geneva.[2] It was rather labour's answer to the Government's claim that as no truly representative organisation of the workers existed and accordingly the Government was free to nominate any labour representative to the International Labour Conference. The establishment of the ILO in 1919 thus brought out clearly the necessity not only of establishing labour organisations, but also of bringing about some sort of coordination amongst the workers in order that they should be able to make their recommendations with one voice.

Consequently, the Government realised that the existence of workers' organisations were inevitable in domestic sphere. According to the report of the Royal Commission on Labour in India "since the need was acute it was bound to evoke a response and if that response did not take the form of a properly organised trade union movement, it could assume a more dangerous form".[3] Accordingly, by promulgating the Trade Unions Act 1926, which for the first time expressly recognised the workers' right of association, the Government tried to direct the movement on to the 'right lines'.[4] Thus, it can be said that the Act was passed by the Government in an attempt to anticipate and check forth-coming developments. So it will not be incorrect to say that the right to form trade unions was achieved in the Trade Unions Act, 1926 "without much

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[2] Revri, C., The Indian Trade Union Movement, New Delhi 1972, p. 85.

[3] Report of the Royal Commission on Labour in India, 1931 London, p. 322.

[4] Revri, C., above note 2, at p. 116.

struggle"[5] and as an indirect result of the 'territory's'[6] participation in the International Labour Conference at Geneva.

At that juncture the Trade Unions Act, 1926 did not include any provision which could be said to be in conflict with the obligations applicable to the 'territory' under the ILO Constitution and Convention No. 11. The Preamble of the Constitution merely provided for recognition of the right of association. Though the term 'freedom of association' had not been used anywhere in the Act, yet it could be deduced from the provisions of the Act that it accorded recognition of such rights to the registered unions. Further, the Act did not contain any provision contrary to Convention No. 11. The Convention merely aimed to remove any discrimination between agricultural and industrial workers in respect of the right of association and combination. The Trade Unions Act, 1926 was consistent with the Convention in that, it did not discriminate between agricultural and industrial workers' right of association.

The ratification of Convention No. 11 by the Government in 1923 was of little practical value as no legislative action was needed to enable the Government to bring its laws into conformity with the Convention as at that juncture no discriminatory laws existed. The ratification of a Convention if accompanied or followed by the necessary legislation, the influence of the

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[5] Khan, B. A., Trade Unionism and Industrial Relations in Pakistan, Karachi 1980, p. 11.

[6] The expression 'territory' is used in this chapter to indicate Bangladesh as part of India under the British Empire and Pakistan.

Convention on the consequential legislation is clear. The Convention provides the cause and the legislation the effect.

The ILO Conventions Nos. 87 and 98 which were ratified by the Government in 1951 and 1952 respectively needed to be followed by enabling legislative action to bring the laws of the land into conformity with the Conventions. But the ratification of the Conventions did not result in any immediate 'cause and effect' as no enabling legislation was passed following the ratifications. Thus, the ratifications confirmed Government's commitment to apply the Conventions but did not give the Conventions any binding force as part of local law. For this purpose the provisions of the instruments had to be embodied in domestic law.[7]

The labour policy of 1955 which was declared by the Government after ratification of Conventions Nos. 87 and 98 did not make any reference of the Government's intention to give effect to the provisions of the ratified Conventions nor did the Government according to the declared policy amend the Trade Unions Act, 1926 to bring it in conformity with the Conventions in fulfilment of its international obligations. Thus, the ratification of Conventions

[7] The first Constitution of the 'territory' which was adopted in 1956 did not provide for automatic incorporation of ratified Conventions in national legislation, with binding force for subjects of the country. In this it followed the dualistic theory of international law, according to which treaties are merely source of reciprocal obligations among the parties subject to international law, without any direct, intrinsic consequence for the internal law of those states. Their provisions could not therefore be cited by citizens in their dealings with national authorities until such time as a specific enactment had given them force of law in the substantive sense, as binding requirements within the national legal system.

Nos. 87 and 98 at that juncture turned out to be nothing but a mere increase in number of ratifications of the ILO Conventions by the Government.

Evidence of the effect of ratified Conventions emerged for the first time in 1959 when the Martial Law Government indicated in a formal declaration that the policy of the Government in the field of labour would be based on the Conventions ratified by the Government. Further, reference was made as to the desirability of introducing collective negotiations and agreements in accordance with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Thus, the promulgation of the Trade Unions (Amendment) Ordinance, 1960, following the declaration of the policy of 1959 which incorporated partially the provisions of Convention No. 98, can be regarded as a result of influence of the Convention. However, the said enactment did not contain any provision to give effect to Convention No. 87. On the other hand, contrary to the provisions of Convention No. 87, the Government subsequently promulgated the Trade Unions (Amendment) Ordinance, 1961 which reduced the participation of 'outsiders' in the formation of union executives from 50% to 25%. The ratification of Convention No. 87 therefore, had hardly exerted any influence over the actions of the Government. While the Government enacted the Trade Unions Act, 1965 it did not take any further consideration of its obligations under the ratified Conventions on freedom of association. It was not until the enactment of the IRO, 1969 that any further initiative on the part of the Government was visible to give effect to the provisions of the Conventions. The

said Ordinance, as it appears, subject to certain restrictive provisions, drew heavily on the basis of Conventions Nos. 87 and 98 and even took over some of their provisions *en bloc*. However, academics have argued that the enactment of the IRO, 1969 was as a result of purely national developments rather than fulfilment of Governments' international obligations under the ILO Conventions. To quote Dr. Abdul Awal Khan:[8]

> The IRO, 1969 which upheld the right of association did not spring from any spontaneous gesture of goodwill or sympathy on the part of the regime for workers; but under compulsion pressed upon it by the weight of the nation wide unrest at that time.[9]

According to Dr. Fashiul Alam:[10]

> The Martial Law Government undertook this venture in order to win over popular support in general and the workers' support in particular after the grim political upheaval of 1969.[11]

Although promulgation of legislation is often necessary to bring domestic law into conformity with the provisions of ratified Conventions, it is sometimes difficult to determine the precise extent to which a change in the law, effected by the ordinary legislative process, may really be attributed to a given Convention. We however, from our discourse in chapter 3 suggest that while the enactment of the IRO, 1969 may have been due to political unrest prevailing in

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[8] Professor, Department of Management, University of Chittagong, Bangladesh.

[9] Khan, A. A., Industrial Relations in Bangladesh: A Study in Trade Unionism, Unpublished Ph.D. Thesis, 1986, University of Chittagong, Bangladesh, p. 52.

[10] Professor, Department of Management, University of Chittagong, Bangladesh.

[11] Alam, F., Collective Bargaining in Bangladesh's Jute Industry, Unpublished Ph.D. Thesis, 1982, Panjab University, India, p. 103.

the country at that time, the Conventions Nos. 87 and 98 nevertheless exerted influence in formulation of the Ordinance as the framers of the Ordinance relied on the provisions of the said Conventions which thus had served as source materials. It needs to be emphasised that such influence was only in matters of laying down the general principles of the right of association as the Ordinance contained some regulative provisions which aimed at limiting the scope of the exercise of right of association as envisaged in the Conventions.

In chapter 4 it has been shown that, after emerging as an independent state in 1971, the workers of the country have been subject to some form of limitation of the right to freedom of association in some way or other. One of the first actions in this direction was the Presidential Order No. 55 of May, 1972 which banned all strikes in and thereby denying to the workers the right to strike as an instrument of collective bargaining. The labour policy of 1972 withdrew the right to strike and collective bargaining in an implicit manner. While declaring the healthy growth of trade unionism, it recommended reducing the activities of trade unions to that of welfare organisations. The legislative framework fabricated to deal with the principles of management of state-owned manufacturing industries i.e., the State-Owned Manufacturing Industries (Terms and Conditions of Service) Act, 1974 can hardly be said to be consistent with the Government's professed faith in collective bargaining as it curtailed the rights of the workers in the public sector of their right to collective bargaining in matters of wages and fringe benefits.

The proclamation of the State of Emergency on 28 December, 1974 suspended the enforcement of the right to freedom of association as guaranteed by Article 38 of the Constitution. Further, the executive Order dated 6 January, 1975, issued in pursuance of Section 19 of the Emergency Powers Rules, 1975, which banned strikes in all undertakings both private and public, was hardly calculated to encourage and promote trade unions and collective bargaining. The proclamation of the Emergency was followed by a declaration of Martial Law and change of regime bringing to power General Ziaur Rahman, who imposed further restrictions on the right to freedom of association, collective bargaining and strikes through the promulgation of Industrial Relations (Regulation) Ordinance, 1975. The outright prohibition of 'outsiders' from becoming the leaders of the basic level unions was in clear violation of Article 3 of Convention No. 87. The same Ordinance, by prohibiting the registration of new trade unions and the election of collective bargaining agents attempted to arrest the growth of union activities. The withdrawal of Martial Law and Emergency in 1979, and subsequently the declaration of labour policy in 1980, followed by the promulgation of Industrial Relations (Amendment) Ordinance, 1980, did not improve the workers' right of association as the Government re-enacted most of the earlier restrictions as provided in the Industrial Relations (Regulation) Ordinance, 1975.

Trade union activities came to a halt after the country having been subject to the Martial Law for the second time as the constitutional guarantee

of the right to freedom of association was not only kept in abeyance, but with the introduction of the Industrial Relations (Regulation) Ordinance, 1982, strikes were again declared illegal and no election of collective bargaining agents could take place.

Prohibition of all these lawful trade union activities impelled the workers to find extra legal ways to ventilate their grievances. In violation of the provisions of the Industrial Relations (Regulation) Ordinance, 1982, the workers united in one platform in the name of Sramik Karmachari Oikya Parisad and organised a movement for the restoration of their rights through meetings and strikes in mass defiance of the laws imposed by the regime. The outcome of the movement was that the Martial Law Authority repealed the Industrial Relations (Regulation) Ordinance, 1982, as a result of which the workers regained the enjoyment of rights that existed before the promulgation of the Ordinance. In one respect, the situation was an improvement on the pre-ordinance position. The Martial Law Authority, by promulgating the Industrial Relations (Amendment) Ordinance, 1985 to some extent relaxed the previous ban on outsider leadership at the plant level unions allowing an ex-worker to be able to become union executive in the establishment where he had worked. But this relaxation did not continue for long and its scope was limited by the promulgation of the Industrial Relations (Amendment) Act, 1990.

An analysis of the contents of the legislation thus reveals that, although the ILO freedom of association standards were ratified by Bangladesh, the

fundamental principles on which they are based have not been fully integrated into its labour legislation. The IRO, 1969 contains provisions similar to Conventions Nos. 87 and 98. However, the laws contained therein are not exact replicas of the Conventions, there are various discrepancies between the national formulations of the laws and the Conventions. The Conventions therefore, have only partially influenced the development of legislation on freedom of association. The scrutiny of the legislative developments further suggests that the legislation on right of association in Bangladesh has been dictated more by expediency and convenience on the part of the Government than by the imperative needs of the workers or in furtherance of the fulfilment of international obligations of the Government. As a result, some provisions are incompatible with the standards on freedom of association as enshrined in the ILO Conventions and have been subject to the criticisms by the ILO supervisory body.[12]

The assessment in chapter 5 shows that the ILO supervisory procedure has generally failed to ensure compliance with the ratified Conventions by the successive Governments. However, the investigation into the Government's record of compliance with the reporting procedure under Article 22 of the ILO Constitution has shown that the Government of undivided India, Pakistan and

[12] Some of the major discrepancies between the national laws and the Conventions concern: multiplicity of unions, election of union representatives, right to collective bargaining in public sector, acts of interference in establishing, functioning and administering unions, public servants' right of association and the power of the Registrar over supervision of the internal affairs of trade unions.

subsequently Bangladesh have all complied with this aspect of supervision. By communicating regularly a set of specified data, successive Governments have made it possible for the ILO to acquire essential information regarding compliance with the ratified Conventions. The reports have constituted the basis of a regular system of ongoing supervision.

In discharging its supervisory role, the Committee of Experts has on no occasion condemned the Government when it considered that certain provisions of a Convention have been violated. Rather, it has directed questions and comments to the Government in restrained terms when it found that provisions of the Convention were not being fully implemented. The Committee has stated in its report that it 'hopes' or 'trusts' that 'measures will be taken to ensure application of the Convention' or has stated that it would be 'glad' or 'grateful' if the Government 'would supply further information'. While the Committee's communication with the Government has always been polite, they have also been persistent when the Committee believed that a continued discrepancy existed. Comments have continued in consecutive years if the Committee has not been satisfied with the Government's response. Failure to bring laws into line with the Convention has led the Committee to express 'concern' or note 'with regret'. Improvements in the implementation have been noted 'with interest' or 'with satisfaction'.

The Committee may thus be said to have developed a stylized understated language to express its views. When it notes with 'concern' or 'with

regret', these phrases are meant to be understood as a serious criticism of the Government's failure to implement a Convention. Although, Committee's circumspect language in referring to Government's noncompliance may sometimes be criticised as being excessively diplomatic, it must be emphasised that a report which gives the Government direction for further action may be of far more practical value than a formal condemnation of past action or inaction. This is so because the fundamental purpose of supervision is to secure effective implementation of the ratified Conventions and not to apply sanctions against the offending state. This is an important feature which distinguishes the executive function of the ILO from the executive function of the national state where sanction is an important element in the enforcement of legislative and executive decisions. The absence of the punitive element in the implementation of the decisions of international organisations may be seen by some as a weakness, but it should be recognised that it is more difficult to apply sanctions against a State than an individual and what is important is to secure the effective application and implementation of institutional decisions rather than to punish a State for non-compliance by the import of sanctions.

The observations of the Committee of Experts and CFA analysed in chapter 5 clearly indicate that ILO standards have hardly exerted any influence upon the policies and behaviour of the Government of Bangladesh. Such apparent indifference to its international obligations on the part of any Government must be subversive of the integrity of the entire international

regime for the protection of the principle of freedom of association. But this experience serves to emphasize the unpleasant but inescapable reality that international standards relating to freedom of association can be efficacious only to the extent that national Governments are prepared to allow them to be so or to the extent that workers are able to push for them. In other words, the ILO can only be as effective an instrument for progress as its member states and other constituents want it to be and it can have no more influence on national legislation than its member states want it to have.

The mere fact of recognising in law of the principle of freedom of association does not in itself suffice to realise such freedom in practice. The granting of specific rights and safeguards to those for whom this freedom is intended is not enough to ensure that they avail themselves of it. If they are to be free to organise in accordance with their aspirations, they must be aware of their rights and the ways of ensuring respect for them and they must have the material means and the qualifications enabling them to establish well-organised occupational associations and to compare and contrast the domestic laws with that of the ILO Conventions.

From the investigation in chapter 6 it is apparent that the union leaders' and workers' level of awareness about the substantive provisions of the Conventions is inadequate for the purpose of comparing and contrasting the rights provided in domestic legislation with that of the international standards. It must be emphasised that if the beneficiaries of the Conventions are to derive

benefits from the Conventions by going beyond what has been provided in the IRO, 1969, they need to know of what rights they are being deprived despite Government's commitment to incorporate them in the domestic law. If they are unaware of the Conventions then they are left at the will of the State bureaucracy and will not be able to advance claims beyond that is which permitted by the state. Therefore there is a need to create awareness amongst them and to mobilise public opinion in order to derive benefits from the provisions of the Conventions. Paradoxically, the majority of the respondents in the study have indicated their satisfaction about the provisions of the IRO, 1969 dealing with the right of association. Their response apparently undermines the relevance and existence of the Conventions and suggests that the Conventions have not been able to exert influence amongst them in their exercise of right of association. Moreover, it has been evident from the responses of the respondents that some aspects of the right of association as specified in the Conventions and upheld by the supervisory bodies are not their actual concern in the exercise of right of association. They have on the contrary extended their support for legislative regulations on issues like multiplicity of unions and prohibition of participation of outsiders in the union executive as envisaged in the IRO, 1969. The ILO Mission's report to the Government of Pakistan on a comprehensive labour survey in 1953, advanced similar views. The Mission argued:

> There are undue multiplicity of registered trade unions in a number of industries, and in the opinion of the Mission this state of affairs

> conspires seriously against healthy development of trade unionism in those industries.[13]

Accordingly, the Mission suggested:

> Because of the terrific complications which arise out of mass illiteracy, there seems special necessity in this country for legislative guidance on the problems of recognition and of multiplicity. Illiteracy is not a sufficient ground for encroaching upon the principles of freedom of association, yet in the interest of workers at large the law must provide for machinery to secure effective recognition of certain trade unions as representative organisations for the purpose of negotiating and conducting collective agreements.[14]

It was further suggested by the Mission:

> The percentage of outsiders holding office in trade unions should be progressively reduced and ultimately eliminated.[15]

Therefore, it appears that in view of local circumstances, successive Governments have taken no measures to bring the laws in conformity with that of ILO standards, nor have demonstrated any intent to lift current restrictions. Such a stand is clearly supported by the decision of the Supreme Court of Bangladesh where their Lordships held:

> "... a statute may provide for the manner of organisation of associations or unions (including trade unions), the nature of its composition, required minimum strength, requirements and conditions of registration, supervision over the activities of an association or union (including trade union) and so on. These legislative exercises, so long as they do not restrict "the right to form associations or unions", may provide for an orderly and rational basis for their functioning. The Ordinance, 1969 is a piece of legislation of that sort. It provides for the manner and

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[13] ILO, Report to the Government of Pakistan on a Comprehensive Labour Survey, Geneva 1953, p. 134.

[14] Id.

[15] Ibid, p. 133

method of organisation of trade unions.[16]

Therefore, in finding out the relativity between the ILO standards and labour legislation, it would be more appropriate not to emphasise the normative or standard setting concerns. It would be more fruitful to talk of methods of adjustment rather than absolute norms. This is especially true since many problems in this sphere are complex in character and are of national rather than global concern. But so far as the application of the ILO Conventions are concerned, there is no room for subjective appraisal of factors not covered by the Convention in question. Accordingly, in its evaluation of national law and practice in relation to the international labour Conventions, the ILO Committee of Experts maintains the following position:

> Its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to the derogations which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out its work, the Committee is guided by the standards laid down by the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different states. These are international standards and the manner in which their implementation is evaluated must be uniform and must not be affected by concepts derived from any particular social or economic system.[17]

Thus, the Committee examines from a strictly legal point of view, the extent to which the Government of Bangladesh having ratified the Conventions on freedom of association has given effect in its laws to the obligations that has

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[16] *Aircraft Engineers v. Registrar, Trade Unions*, Dhaka Law reports, (AD) Vol. 45, 1993, p. 126.

[17] ILO, Report of the Committee of Experts, 63rd Session, Geneva 1977, p. 12.

derived therefrom, irrespective of its social and economic condition. Hence, it is apparent that one of the most important reasons as to why it has not been possible for the Government of Bangladesh to comply with the provisions of the Conventions in full is that the ILO Conventions being intended to serve as international standards, do not and can not take into account conditions peculiar to any country. The Conventions are not at all flexible. Once ratified, implementation has to be in full and to the last letter, in conformity with the provisions of the Conventions. This rigidity makes it difficult to secure complete observance of the Conventions.

The universal application of standards, which the ILO advocates, has been implicitly rejected by the Supreme Court of Bangladesh in the *Aircraft Engineers* case[18] where the Court while indicting the source of Section 3 of the IRO, 1969 observed:

> This Section has its source in Article 2 of Convention No. 87 adopted by the International Labour Organisation in 1948 and ratified by (former) Pakistan. But the Ordinance, 1969 follows its own method of organisation of trade unions, which may or may not be the same in other parts of the world.[19]

Freedom of association like other human rights is not an abstract concept. It is closely bound up, within each society, with conditions of social life, economic conditions and historical development. Uniform implementation in a world-wide framework seems therefore difficult to achieve and appear to be neither possible

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[18] See above, note 17.

[19] Ibid, p. 126.

nor desirable. Francis Wolf thus rightly pointed out: "no one can expect these standards to provide a universal remedy, but in order to ensure that they fulfil their role, it is essential to examine their limitations and the ways to overcome those limitations".[20] It should be borne in mind that a Convention has to gain acceptance from member countries if it is to be effective in achieving its purposes. A Convention which seeks to provide really high standards may fail to secure acceptance and those which succeed in securing acceptance may not be able to prescribe high labour standards. Thus Conventions, if they are to be of real weight in the establishment of internationally uniform labour standards, must strike an appropriate balance between the ideal and the immediately practicable and between precision and flexibility. It needs to be emphasised that the ILO is not a global Ministry of Labour. It can set guidelines for national action, but it can not substitute itself for Governments, or for trade unions, or for employers' organisations. The great value of the organisation is the mobilisation of public opinion. As a result, unless the labour movement is strong and alert and public opinion is sympathetic, the workers at the national level will not able to enjoy the benefits of the Conventions even after they are ratified.

It is thus apparent that a state cannot be impelled by the ILO to bring about changes in domestic law in harmony with the ratified Conventions or to act upon the views of its supervisory bodies. From international viewpoint, it

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[20] Wolf, F., "Human Rights and the International Labour Organisation", in Human Rights in International Law, Meron, T., (ed.) New York 1984, p. 294.

is not satisfactory either for the ILO or for the state concerned to leave the unresolved issues resulting delay in the implementation of ratified Conventions. It can be said of the ILO procedure, that it subsists with the issues for too long in an effort to secure compliance of the Conventions. But this is perhaps the only way of handling an intractable situation and does in fact result in keeping the situation open for reconsideration. The law's delays have been a legitimate grievance throughout history, but justice delayed is less justice denied than the hurried rough justice. It appears that only by taking this kind of long view can we hope to make a lasting reality of international action for the protection of the right to freedom of association at national level.

Bibliography

Ago, R., "The Final Stage of Codification of International Law", in Year Book of International Law Commission, Vol. 2, New York 1968, pp. 171-178.

Ahmed, K., Labour Movement in Bangladesh, Dhaka 1978.

Ahmed, M.,"Labour Policy and Collective Bargaining", in National Seminar on Trade Union Development, Dhaka 1980, pp. 13-20.

Alam, F., "Collective Bargaining in Bangladesh's Jute Industry", in Panjab University Management Review, Vol. IV, Nos. 1-2, 1981, pp. 59-78.

Alam, F., "Collective Bargaining in Bangladesh's Jute Industry", Unpublished Ph.D. Thesis, 1982, Panjab University, India.

Alam, F., "Some Aspects of Trade Union Structure in Bangladesh", in Chittagong University Studies, (Commerce), Part I, Vols. V-VI, 1981-82, pp. 1-23.

Alcock, A., History of the International Labour Organisation, London 1971.

Amjad, R. and Mahmood, K., Industrial Relations and Political Process in Pakistan 1947-77, Geneva 1982.

Aziz, A., Organising Agricultural Labourers in India: A Proposal, Calcutta 1980.

Badiuzzaman, M., The Growth and Deveopment of Trade Unionism in Bangladesh: 1947-1986, Unpublished Ph.D. Thesis, 1987, University of Keele, England.

Bari, E., Martial Law in Bangladesh 1975-79: A Legal Analysis, Unpublished Ph.D. Thesis, 1985, University of London, England.

Ben-Israel, R., International Labour Standards: The Case of Freedom to Strike, Deventer 1988.

Bokor-Szego, S. H., The Role of the United Nations in International Legislation, New York 1978.

Brownlie, I., (ed.), Basic Documents on Human Rights, New York 1992.

Caire, G., Freedom of Association and Economic Development, Geneva 1977.

Choudhury, G. W., Constitutional Development in Pakistan, London 1969.

Choudhury, G. W., The Last Days of United Pakistan, London 1974.

Chowdhury, A. K., Independence of East-Bengal, Dhaka 1984.

Chowdhury, S. R., The Genesis of Bangladesh, London 1972.

Crawford, J., The Creation of States in International Law, Oxford 1979.

Creighton, W. B., "The ILO and the Protection of Freedom of Association in the United Kingdom", in Human Rights and Labour Law, Ewing, K. D., Gearty, C. A. and Hepple B. A., (eds.), London 1994.

Creighton, W. B., "Principles and Procedures of the ILO Relating to Freedom of Association", in Interights Bulletin, Vol. 6, No.1, 1991, pp. 1-6, 23.

D'Costa, R., The Role of Trade Unions in Developing Countries: A Study of India, Pakistan and Ceylon, Louvain 1963.

Dahl, K. N., "The Role of I.L.O. Standards in the Global Integration Process" in Journal of Peace Research, Vol. 5, 1968, pp. 309-351.

Das, R. K., History on Indian Labour Legislation, Culcatta 1941.

Davies, P. and Freedland, M. (eds.), Kahn-Freund's Labour and the Law, London 1983.

Dhyani, S. N., International Labour Organisation and India, New Delhi 1977.

Dongen, P. H., "The Right to Strike within the Framework of the ILO" in Netherlands International Law Review, Vol.XXIV, 1977, pp. 108-119.

Dufty, N. E., "Technical Assistance and the ILO", in Journal of Industrial Relations (Sydney), Vol. 9, No. 3, 1967, pp. 245-257.

Eastern Pakistan Labour Journal, Vol. II, No.1, March 1949.

Francis, W., "Human Rights and International Labour Organization", in Human Rights in International Law, Meron, T., (ed.), New York 1984, pp. 273-305.

Ghebali, V., The International Labour Organisation: A Case Study on the Evolution of U.N. Specialised Agencies, Dorderecht, 1989.

Giri, V. V., Labour Problems in Indian Industry, London 1959.

Gormley, W. P., "The Emerging Protection of Human Rights by the International Lanour Organization", in Albany Law Review, Vol. 30, 1966, pp. 13-51.

Government of Bangladesh, Labour Policy, 1972.

Government of Bangladesh, Labour Policy, 1980.

Government of Bangladesh, Report of the Industrial Workers' Wages Commission, 1973.

Government of India, Labour Investigation Committee, (Main Report), New Delhi 1946.

Government of India, The Indian Labour Year Book, Simla 1947-48.

Government of Pakistan, Labour Policy, 1955.

Government of Pakistan, Labour Policy, 1959.

Government of Pakistan, Labour Policy, 1969.

Haas, E. B., Beyond the Nation-State: Functionalism and International Organization, California 1964.

Haas, E. B., Human Rights and International Action: The Case of Freedom of Association, Stanford 1970.

Hasan, Z., The Separation of East Pakistan: the Rise and Realization of Bengali Muslim Nationalism, Karachi 1994.

Hodes-Aeberhard, J. and Odepo de Dois, A., "Principles of the Committee on Freedom of Association Concerning Strikes" in International Labour Review, Vol. 126, 1987, pp. 543-564.

Hodges-Aeberhard, J., "The Right to Organise in Article 2 of Convention No. 87", in International Labour Review, Vol. 128, 1989, pp.177-194.

ILO, "Explanatory Note", in The International Labour Code 1951, Vol. 1, Geneva 1952, pp. LXXVII-CXXXVII.

ILO, "The Institution of Tripartite Labour Organisation in India: The Influence of the ILO", in International Labour Review, Vol. 47, 1943, pp. 1-21.

ILO, Freedom of Association (Studies and Reports, Series A, Nos. 28-32), Vol. 5, Geneva 1930.

ILO, Freedom of Association and Collective Bargaining, Geneva 1994.

ILO, Freedom of Association and Collective Bargaining: General Survey, Geneva 1983.

ILO, Freedom of Association and Industrial Relations, Report VII, ILC, 30th Session, Geneva 1947.

ILO, Freedom of Association: A Workers Education Manual, Geneva 1987.

ILO, Freedom of Association: An International Survey, Geneva 1975.

ILO, Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva 1985.

ILO, ILO Principles Standards and Procedures Concerning Freedom of Association, Geneva 1989.

ILO, International Labour Standards, Geneva 1980.

ILO, International Labour Standards: A Workers Education Manual, Geneva 1990.

ILO, Lists of Ratifications by Convention and by Country, Report III, (Part 5), Geneva 1995.

ILO, Official Bulletin , Vol. 1, Geneva 1919.

ILO, Official Bulletin, Vol. XXIX, No. 4, Geneva 1946.

ILO, Official Bulletin, Vol.XXXI, No. 3, Geneva 1948.

ILO, Official Bulletin, Series B, Vol. LIX, No. 1, Geneva 1976.

ILO, Official Bulletin, Series B, Vol. LVII, No. 1 (Supplement), Geneva 1974.

ILO, Official Bulletin, Series B, Vol. LX, No. 3, Geneva 1977.

ILO, Official Bulletin, Series B, Vol. LXI, Nos. 1-3, Geneva 1978.

ILO, Official Bulletin, Series B, Vol. LXII, No. 2, Geneva 1979.

ILO, Official Bulletin, Series B, Vol. LXII, No. 3, Geneva 1979.

ILO, Official Bulletin, Series B, Vol. LXIII, Nos. 1 and 3, Geneva 1980.

ILO, Official Bulletin, Series B, Vol. LXIV, No. 3, Geneva 1981.

ILO, Official Bulletin, Series B, Vol. LXVI, No. 3, Geneva 1983.

ILO, Official Bulletin, Series B, Vol. LXII, Nos. 2 and 3, Geneva 1984.

ILO, Record of Proceedings, ILC, 7th Session, Geneva 1925.

ILO, Record of Proceedings, ILC, 8th Session, Geneva 1926.

ILO, Record of Proceedings, ILC, 10th Session, Geneva 1927.

ILO, Record of Proceedings, ILC, 30th session, Geneva 1947.

ILO, Record of Proceedings, ILC, 32nd Session, Geneva 1949.

ILO, Record of Proceedings, ILC, 57th session, Geneva 1972.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 37th Session, Geneva 1954.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 38th Session, Geneva 1955.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 39th Session, Geneva 1956.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 40th Session, Geneva 1957.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 42nd Session, Geneva 1958.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 43rd Session, Geneva 1959.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 44th Session, Geneva 1960.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 45th Session, Geneva 1961.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 46th Session, Geneva 1962.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 47th Session, Geneva 1963.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 48th Session, Geneva 1964.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 49th Session, Geneva 1965.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 50th Session, Geneva 1966.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 51st Session, Geneva 1967.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 53rd Session, Geneva 1969.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part IV), 56th Session, Geneva 1971.

ILO, Report of the Committee of Experts on Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), Vol. B, Geneva 1973.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part 4A), 69th Session, Geneva 1983.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part 4A), 71st Session, Geneva 1985.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part 4A), 73rd Session, Geneva 1987.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part 4A), 75th Session, Geneva 1988.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part 4A), 76th Session, Geneva 1989.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part 4A), 78th Session, Geneva 1991.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part 4A), 81st Session, Geneva 1994.

ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, (Part 4A), 82nd Session, Geneva 1995.

ILO, Report of the Director General, ILC, 70th session, 1984.

ILO, Report of the ILO/SIDA Mission on Workers Participation on Management in Bangladesh, Geneva 1973.

ILO, Report to the Government of Pakistan on a Comprehensive Labour Survey, Geneva 1953.

ILO, Report to the Government of Pakistan on the Visit of a Joint Team of Experts on Labour-Management Relations, Sept-Oct. 1959, Geneva 1960.

ILO, Summary of Reports on Ratified Conventions, Report III, (Part I), 37th Session, Geneva 1954.

ILO, The ILO Role in Technical Cooperation, Geneva 1977.

ILO, The Impact of International Labour Conventions and Recommendations, Geneva 1976.

ILO, The International Labour Organisation: The First Decade, London 1931.

Islam, M., "Industrial Relations in Bangladesh", in Indian Journal of Industrial Relations, Vol. 19, 1982, pp. 161-189.

Ivanov, S. A., "The International Labour Organisation: Control Over Application of the Conventions and Recommendations on Labour" in Control Over Compliance with the International Law, Butler, W. E., (ed.), Dordrecht, 1991, pp.153-163.

Jenks, C. W., "The International Protection of Freedom of Association for Trade Union Purposes", in Recueil Des Cours, Vol. 87, 1955, pp. 7-107.

Jenks, C. W., "The International Protection of Trade Union Rights", in The International Protection of Human Rights, Luard, E., (ed.), London 1967, pp. 210-247.

Jenks, C. W., "The Revision of the Constitution of the International Labour Organisation", in British Year Book of International Law, Vol. 23, 1946, pp. 402-428.

Jenks, C.W., "The Protection of Freedom of Association by the International Labour Organisation", in British Year Book of International Law, Vol. 28, 1951, pp. 348-59.

Jenks, C. W., The International Protection of Trade Union Freedom, London 1957.

Jenks, C.W., Human Rights and International Labour Standards, London 1960.

Karnik, V. B. Strikes in India, Bombay 1967.

Khalid, M., Trade Unionism in Pakistan, Lahore, 1958.

Khan, A. A., "Government Policies Towards Labour in Bangladesh : A Historical Analysis", in The Dhaka University Studies, Part-C, Vol. 7, No. 2, 1986, pp. 85-99.

Khan, A. A., "Strikes and Military Rule in Bangladesh", in Chittagong University Studies, (Commerce), Vol. 5, 1989, pp. 27-46.

Khan, A. A., Industrial Relations in Bangladesh: A Study of Trade Unionism, Unpublished Ph.D. Thesis, 1986, University of Chittagong, Bangladesh.

Khan, H., The Fundamental Right to Freedom of Association in Indo-Pak Bangladesh Sub-Continent, Dhaka 1980.

Khan, M. M., and Ahmed, M., Participative Management in Industry, Dhaka 1980.

Landy, E. A., "The Effective Application of International Labour Standards", in International Labour Review, Vol. 68, 1953, pp. 346-363.

Landy, E. A., "The Influence of International Labour Standards: Possibilities and Performance", in International Labour Review, 1970. Vol. 101, pp. 555-605.

Landy, E. A., The Effectiveness of International Supervision: Thirty Years of ILO Experience, London 1966.

Leary, V. A., "Lessons from the Experience of the International Labour Organisation" in The United Nations and Human Rights: A Critical Appraisal, Alston, P., (ed.), New York, 1992. pp. 580-619.

Leary, V. A., International Labour Conventions and National Law: The Effectiveness of the Automatic Incorporation of Treaties in National Legal Systems, The Hague 1982.

Lokanathan, P. S., Industrial Welfare in India, Madras 1929.

Mahmud, K., Trade Unionism in Pakistan, Lahore 1958.

Martuza, G. and Momen, M. A., Trade Unionism and Trade Union Laws in Bangladesh, Dhaka 1986.

Mathur, A. S., Trade Union Movement in India, Allahabad 1957.

Menon, V. K. R., "The Influence of International Labour Convention on Indian Legislation", in International Labour Review, Vol. 73, 1956, pp. 551-71.

Miller, D. H., The Drafting of the Covenant, New York 1928.

Morse, D. A., The Origin and Evolution of the ILO and Its Role in the World Community, New York 1969.

Mortuza, G., "Labour Laws: Policies and Principles with Particular Reference to Bangladesh", in Industrial Relations Laws Policies and Principles, Dhaka 1982, pp. A3-A14.

Moser, C. A., and Kalton, G., Survey Methods in Social Investigation, London 1971.

O'Connell, D. P., State Succession in Municipal Law and International Law, Vol. I & II , Cambridge 1967.

Osieke, E., Constitutional Law and Practice in the International Labour Organisation, Dordercht 1985.

Parviz, N., Labour Policy and Planning in Pakistan, Karachi 1962.

Pirzada, S. S., Fundamental Rights and the Constitutional Remedies in Pakistan, Karachi 1966.

Potobsky, G. V., "Protection of Trade Union Rights: Twenty Years' Work by the Committee on Freedom of Association", in International Labour Review, Vol. 105, 1972, pp. 69-83.

Pouyat, A. J., "The ILO's Freedom of Association Standards and Machinery: a Summing Up", in International Labour Review, Vol. 121, 1982, pp. 287-302.

Price, J., ILO: 50 Years On, London 1969.

Puri, M. M., India in the International Labour Organisation, The Hague 1958.

Rao, B., "Relativity Between Norms Fixed by the International Labour Organisation and Labour Legislation in India", in Journal of the Indian Law Institute, Vol. 16, 1974, pp. 88-97.

Rens, J., "The ILO and Technical Cooperation", in International Labour Review, Vol. LXXXIII, No. 5, 1961, pp. 413-435.

Report of the All India Trade Union Congress, 5th Session, 1925.

Report of the All India Trade Union Congress, 6th Session, 1926.

Report of the Indian Statutory Commission, Vol. 5, London 1930.

Report of the Royal Commission on Labour in India, London 1931.

Revri, C., The Indian Trade Union Movement, New Delhi 1972.

Rizvi, S. A., Industrial Relations and Development in Pakistan, Bangkok 1979.

Roberts, B. C., Labour in the Tropical Territories of the Commonwealth, London 1964.

Samson, K. T., "The Changing Pattern of ILO Supervision", in International Labour Review, Vol. 118, 1979, pp. 569-587.

Schachter, O., "The Development of International Law Through the Legal Opinions of the United Nations Secretariat", in British Year Book of International Law, Vol. 25, 1948, pp. 91-132.

Sen, S. D. K., "The Partition of India and Succession in International Law", in Indian Law Review, Vol. 1, 1947, pp. 190-201.

Servais, J., "Flexibility and Rigidity in International Labour Standards", in International Labour Review, Vol. 125, 1986, pp. 193-208.

Servais, J., "ILO Standards on Freedom of Association and their Implementation", in International Labour Review, Vol. 123, 1984, pp. 765-781.

Sethi, L. R., "India in the Community of Nations", in Canadian Bar Review, Vol. 14, 1936 pp. 36-49.

Shafi, M., "Recognition of Trade Unions" in Eastern Worker, Vol. 1 No. 9, 1960, p. 77-80.

Shafi, M., Eleven Years of Labour Policy, Karachi 1959.

Shafi, M., Labour policy of Pakistan, Karachi 1969.

Shafi, M., Labour Policy of the Government of Pakistan, Karachi 1961.

Shaheed, Z. A., The Organisation and Leadership of Industrial Labour in Karachi (Pakistan), Unpublished Ph.D Thesis, 1977, University of Leeds, U.K.

Sharma, G. K., Labour Movement in India: Its Past and Present, Delhi 1963.

Shotwell, J. T., (ed.), The Origins of the International Labour Organisation, (2 Vols.), New York 1934.

Sobhan, R. and Ahmad, M., Public Enterprise in an Intermediate Regime: A study in the Political Economy of Bangladesh, Dhaka 1980.

Subramanian, K. N., Labour-Management Relations in India, Bombay 1967.

The Bangladesh Observer, Dhaka, March 30, 1984.

The Gazette of Pakistan, Extraordinary, 1952.

The Holiday, Dhaka, April 27, 1984.

The Legislative Assembly Debates, Vol. 1, Part 1, Delhi 1921.

The Legislative Assembly Debates, Vol 5, Part 1, Delhi 1925.

The Sangbad, Dhaka, May 20, 1984.

Tikriti, A., Tripartism and the International Labour Organisation, Stockholm 1982.

Udokang, O., Succession of New States to International Treaties, New York 1972.

United Nations Conference on Succession of States in Respect of Treaties, Vol. III, New York 1979.

United Nations, Materials on Succession of States, New York 1967.

Vaid, K. N., State and Labour In India, Bombay 1965.

Valticos, N., "Fifty Years of Standard Setting Activities by the International Labour Organisation", in International Labour Review, Vol. 100, Geneva 1969, pp. 201-237.

Valticos, N., "The Future Prospects for International Labour Standards" in International Labour Review, Vol. 118, 1979, pp. 679-697.

Valticos, N., "The Role of the ILO: Present Action and Future Perspectives" in Human Rights: Thirty Years After the Universal Declaration, Ramcharan, B. G., (ed.), The Hague 1979.

Valticos, N., International Labour Law, Deventer 1979.

Vidyarthi, R. D., Growth of Labour Legislation in India Since 1939 and Its Impact on Economic Development, Calcutta 1961.

Von Prondzynski, F., Freedom of Association and Industrial Relations: A Comparative Study, London 1987.

Wheare, K. C.,"The Empire and the Peace Treaties 1918-21", in The Cambridge History of British Empire", Vol. III, Cambridge 1959, pp. 645-666.

Wilson, F. G., Labour in the League System, California 1934.

Wolf, F., "Human Rights and the International Labour Organization", in Human Rights and International Law, Meron, T., (ed.), New York 1984, pp. 273-305.

Wolf, F., "ILO Experience in the Implementation of Human Rights", in The Journal of International Law and Economics, Vol. 10, 1975, pp. 599-625.

Yearbook of International Law Commission, Vol. II, New York 1962.

Yearbook of International Law Commission, Vol. II, Part 1, New York 1974.

Zeytinoglu, I. U., "The Impact of ILO's Freedom of Association Standards on African Labour Laws", in Comparative Labour Law Journal, Vol. 8, 1986, pp. 48-62.

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List of Statutes

Bangladesh (Adaptation of Existing Laws) Order, 1972.

Bangladesh Industrial Enterprises (Nationalisation) Order, 1972.

Bangladesh Nationalised Enterprises and Statutory Corporations (Prohibition of Strikes and Unfair Labour Practice) Order, 1972.

Constitution of Bangladesh, 1972.

Constitution (Fourth Amendment) Act, 1975.

Constitution (Final Revival) Order, 1986.

Constitution of Pakistan, 1956.

Constitution of Pakistan, 1962.

Constitution (First Amendment) Act, 1963.

Criminal Law Amendment Act, 1908.

Defence of India Rules, 1942.

East Pakistan Trade Unions (Recognition) Ordinance, 1958.

East Pakistan Trade Unions Act, 1965.

Emergency Powers Ordinance, 1974.

Emergency Powers Rules, 1975.

Government of India Act, 1935.

Indian Independence Act, 1947.

Indian Penal Code, 1860.

Industrial Disputes Act, 1947.

Industrial Relations Ordinance, 1969.

Industrial Relations (Regulation) Ordinance, 1975.

Industrial Relations Rules, 1977.

Industrial Relations (Amendment) Ordinance, 1977.

Industrial Relations (Amendment) Act, 1980.

Industrial Relations (Regulation) Ordinance, 1982.

Industrial Relations (Regulation) (Repeal) Ordinance, 1984.

Industrial Relations (Amendment) Ordinance, 1985.

Industrial Relations (Amendment) Act, 1990.

Laws Continuance Enforcement Order, 1971.

Pakistan (Continuation of Existing Laws) Order, 1947.

Provisional Constitution Order, 1969.

Security of Pakistan Act, 1952.

State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1973.

State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974.

Trade Unions Act, 1926.

Trade Unions Act, 1965.

Trade Disputes Act, 1929.

Trade Unions (Amendment) Ordinance, 1960.

Trade Unions (Amendment) Ordinance, 1961.

APPENDIX I

QUESTIONNAIRE FOR THE UNION LEADERS

PART - A

Identification of the respondent:

Education:
(i) Primary
(ii) Secondary
(iii) Higher Secondary
(iv) Graduate and above

PART - B

1. Are you aware about the existence of the International Labour Organisation (ILO)?
   (i) Yes
   (ii) No

1.(a) If you are, what is the source of your awareness?
   (i) Own reading
   (ii) Mass media
   (iii) Local ILO Office
   (iv) From political leader
   (v) From trade union leader
   (vi) From employer
   (vii) From worker

2. Are you aware that the ILO has laid down some Conventions on freedom of association?
   (i) Yes
   (ii) No

2.(a) If you are, then what is the source of your awareness?
   (i) Own reading
   (ii) Mass media
   (iii) Local ILO office
   (iv) From political leader
   (v) From union leader
   (vi) From employer
   (vii) From worker

2.(b) If you are aware, then how much do you know about the provisions of the Conventions?
(i) Fairly detailed
(ii) Basic contents
(iii) Very little
(iv) Heard that there are Conventions

2.(c) If you are not, then what is the main reason of your lack of knowledge?
(i) Lack of education
(ii) Lack of interest
(iii) Nobody told me

3. What is your response to the statement: "workers should have the right to establish trade unions"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

4. What is your response to the statement: "workers should have the right to establish and join trade unions of their own choosing"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

5. What is your response to the statement: "workers should have the right to establish trade unions without previous authorisation"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

6. What is your response to the statement: "in order to establish trade unions workers should have the right to elect their representatives in full freedom"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

7. What is your response to the statement: "trade unions should not be liable to be dissolved or suspended by administrative authority"?
   (i) Strongly agree
   (ii) Agree
   (iii) Disagree
   (iv) Strongly disagree
   (v) Unable to answer

8. What is your response to the statement: "trade unions should have the right to establish and join federation and confederation"?
   (i) Strongly agree
   (ii) Agree
   (iii) Disagree
   (iv) Strongly disagree
   (v) Unable to answer

9. Are aware that the IRO, 1969 contains provisions on right to freedom of association?
   (i) Yes
   (ii) No

9.(a) If you are aware, then how much do you know about the provisions of the IRO, 1969?
   (i) Fairly detailed
   (ii) Basic contents
   (iii) Very little
   (iv) Heard that there are some provisions

9.(b) If you are not, then what is the main reason of your lack of knowledge?
   (i) Lack of education
   (ii) Lack of interest
   (iv) Nobody told me

10. Are you satisfied with the provisions of the IRO, 1969 regarding freedom of association?
   (i) Yes
   (ii) No
   (iii) Unable to answer

   Please give reasons for your answer.

11. What is your attitude towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

12. According to you what is the attitude of Government towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

13. According to you what is the attitude of the workers in general towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

14. According to you what is the attitude of the employers in general towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

APPENDIX II

QUESTIONNAIRE FOR THE WORKERS

PART - A

Identification of the respondent:

Education:
(i) Primary
(ii) Secondary
(iii) Higher Secondary
(iv) Graduate and above

PART - B

1. Are you aware about the existence of the International Labour Organisation (ILO)?
   (i) Yes
   (ii) No

1.(a) If you are, what is the source of your awareness?
   (i) Own reading
   (ii) Mass media
   (iii) Local ILO Office
   (iv) From political leader
   (v) From trade union leader
   (vi) From employer
   (vii) From worker

2. Are you aware that the ILO has laid down some Conventions on freedom of association?
   (i) Yes
   (ii) No

2.(a) If you are, then what is the source of your awareness?
   (i) Own reading
   (ii) Mass media
   (iii) Local ILO office
   (iv) From political leader
   (v) From union leader
   (vi) From employer
   (vii) From worker

2.(b) If you are aware, then how much do you know about the provisions of the Conventions?
(i) Fairly detailed
(ii) Basic contents
(iii) Very little
(iv) Heard that there are Conventions

2.(c) If you are not, then what is the main reason of your lack of knowledge?
(i) Lack of education
(ii) Lack of interest
(iii) Nobody told me

3. What is your response to the statement: "workers should have the right to establish trade unions"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

4. What is your response to the statement: "workers should have the right to establish and join trade unions of their own choosing"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

5. What is your response to the statement: "workers should have the right to establish trade unions without previous authorisation"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

6. What is your response to the statement: "in order to establish trade unions workers should have the right to elect their representatives in full freedom"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

7. What is your response to the statement: "trade unions should not be liable to be dissolved or suspended by administrative authority"?
   (i) Strongly agree
   (ii) Agree
   (iii) Disagree
   (iv) Strongly disagree
   (v) Unable to answer

8. What is your response to the statement: "trade unions should have the right to establish and join federation and confederation"?
   (i) Strongly agree
   (ii) Agree
   (iii) Disagree
   (iv) Strongly disagree
   (v) Unable to answer

9. Are aware that the IRO, 1969 contains provisions on right to freedom of association?
   (i) Yes
   (ii) No

9.(a) If you are aware, then how much do you know about the provisions of the IRO, 1969?
   (i) Fairly detailed
   (ii) Basic contents
   (iii) Very little
   (iv) Heard that there are some provisions

9.(b) If you are not, then what is the main reason of your lack of knowledge?
   (i) Lack of education
   (ii) Lack of interest
   (iv) Nobody told me

10. Are you satisfied with the provisions of the IRO, 1969 regarding freedom of association?
   (i) Yes
   (ii) No
   (iii) Unable to answer

   Please give reasons for your answer.

11. What is your attitude towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

12. According to you what is the attitude of Government towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

13. According to you what is the attitude of the employers in general towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

14. According to you what is the attitude of the trade union leaders in general towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

APPENDIX III

QUESTIONNAIRE FOR THE EMPLOYERS

PART - A

Identification of the respondents:

Education:
(i) Primary
(ii) Secondary
(iii) Higher Secondary
(iv) Graduate and above

PART - B

1. Are you aware about the existence of the International Labour Organisation (ILO)?
   (i) Yes
   (ii) No

1.(a) If you are, what is the source of your awareness?
   (i) Own reading
   (ii) Mass media
   (iii) Local ILO Office
   (iv) From political leader
   (v) From trade union leader
   (vi) From employer
   (vii) From worker

2. Are you aware that the ILO has laid down some Conventions on freedom of association?
   (i) Yes
   (ii) No

2.(a) If you are, then what is the source of your awareness?
   (i) Own reading
   (ii) Mass media
   (iii) Local ILO office
   (iv) From political leader
   (v) From union leader
   (vi) From employer
   (vii) From worker

2.(b) If you are aware, then how much do you know about the provisions of the Conventions?
(i) Fairly detailed
(ii) Basic contents
(iii) Very little
(iv) Heard that there are Conventions

2.(c) If you are not, then what is the main reason of your lack of knowledge?
(i) Lack of education
(ii) Lack of interest
(iii) Nobody told me

3. What is your response to the statement: "workers should have the right to establish trade unions"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

4. What is your response to the statement: "workers should have the right to establish and join trade unions of their own choosing"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

5. What is your response to the statement: "workers should have the right to establish trade unions without previous authorisation"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

6. What is your response to the statement: "in order to establish trade unions workers should have the right to elect their representatives in full freedom"?
(i) Strongly agree
(ii) Agree
(iii) Disagree
(iv) Strongly disagree
(v) Unable to answer

7. What is your response to the statement: "trade unions should not be liable to be dissolved or suspended by administrative authority"?
   (i) Strongly agree
   (ii) Agree
   (iii) Disagree
   (iv) Strongly disagree
   (v) Unable to answer

8. What is your response to the statement: "trade unions should have the right to establish and join federations and confederations"?
   (i) Strongly agree
   (ii) Agree
   (iii) Disagree
   (iv) Strongly disagree
   (v) Unable to answer

9. Are you aware that the IRO, 1969 contains provisions on right to freedom of association?
   (i) Yes
   (ii) No

9.(a) If you are aware, then how much do you know about the provisions of the IRO, 1969?
   (i) Fairly detailed
   (ii) Basic contents
   (iii) Very little
   (iv) Heard that there are some provisions

9.(b) If you are not, then what is the main reason of your lack of knowledge?
   (i) Lack of education
   (ii) Lack of interest
   (iv) Nobody told me

10. Are you satisfied with the provisions of the IRO, 1969 regarding freedom of association?
   (i) Yes
   (ii) No
   (iii) Unable to answer

   Please give reasons for your answer.

11. What is your attitude towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

12. According to you what is the attitude of Government towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

13. According to you what is the attitude of the union union leaders in general towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer

14. According to you what is the attitude of the workers in general towards the ILO and its Conventions on freedom of association?
    (i) Anti-ILO
    (ii) Pro-ILO
    (iii) Maintain double standard
    (iv) Difficult to ascertain
    (v) Unable to answer